

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

SMARTFLASH LLC and )  
SMARTFLASH TECHNOLOGIES ) DOCKET NO. 6:13cv447  
LIMITED )

-vs-

) Tyler, Texas  
) 8:44 a.m.  
APPLE INC. ) February 18, 2015

TRANSCRIPT OF TRIAL  
MORNING SESSION  
BEFORE THE HONORABLE RODNEY GILSTRAP,  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. BRADLEY W. CALDWELL  
MR. JASON D. CASSADY  
MR. JOHN AUSTIN CURRY  
CALDWELL CASSADY & CURRY  
2101 Cedar Springs Rd., Ste. 1000  
Dallas, Texas 75201

MR. T. JOHN WARD, JR.  
WARD & SMITH LAW FIRM  
P.O. Box 1231  
Longview, Texas 75606

1 FOR THE DEFENDANTS:

2

3 MR. JAMES R. BATCHELDER  
4 ROPES & GRAY LLP  
1900 University Ave., 6th Floor  
East Palo Alto, California 94303-2284

5

6 MS. CHING-LEE FUKUDA  
7 MR. KEVIN J. POST  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
8 New York, New York 10036-8704

9

10 MR. ERIC ALBRITTON  
ALBRITTON LAW FIRM  
11 P. O. Box 2649  
Longview, Texas 75606

12

13

14

15

16 COURT REPORTERS: MS. SHELLY HOLMES, CSR, TCRR  
OFFICIAL COURT REPORTER  
shelly\_holmes@txed.uscourts.gov

17

18 MS. SHEA SLOAN, CSR, RPR  
OFFICIAL COURT REPORTER  
shea\_sloan@txed.uscourts.gov

19

20

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24 Proceedings taken by Machine Stenotype; transcript was  
25 produced by a Computer.

1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 Counsel, I understand there may be an agreement  
6 that you want to announce into the record. If so, please  
7 proceed.

8 MR. CASSADY: Thank you, Your Honor.

9 Your Honor, in this case, a number of products came  
10 out after discovery and basically during the expert discovery  
11 time period in late October, November. The parties agreed  
12 that we shouldn't open up discovery and -- and reopen the  
13 learning about those products.

14 So the parties have agreed that the iPhone 6, the  
15 iPad Mini 3, and the iPad Air 2, which are products that were  
16 released at that time, are not part of this trial and not  
17 part of this case at this time.

18 THE COURT: Do Defendants concur in that  
19 stipulation?

20 MR. CASSADY: And, Your Honor, one more, the  
21 iPhone 6 Plus as well. I apologize.

22 MR. POST: And with that, Your Honor, yes,  
23 Defendants agree.

24 THE COURT: All right. The Court will accept that  
25 agreement and stipulation of the parties.

1 Mr. Batchelder?

2 MR. BATCHELDER: Two things, Your Honor.

3 One is, as we discussed this morning, if we could  
4 just have read into the record Your Honor's preference to  
5 have the JMOL issues handled at the end without waiver.

6 THE COURT: Well, it is the Court's preference that  
7 motions under Rule 50(a) be presented by the parties after  
8 the close of all the evidence.

9 The rule is clear to the Court on its face that as  
10 long as they're presented before the case is submitted to the  
11 jury, they're timely. The Court will consider them presented  
12 at that time -- at that time to be timely, and there will not  
13 be any waiver by either party in the mind of the Court.

14 MR. BATCHELDER: Thank you, sir.

15 The other issue is, we're concerned that the jury  
16 may be somewhat confused by Plaintiffs calling Apple's  
17 witnesses in their case, and we would request just an  
18 explanatory instruction to the jury that when they rest, the  
19 jury be told that Apple has already begun its case by  
20 presenting some of its own evidence through those witnesses.

21 We just don't want the jury to be under the  
22 impression that our case doesn't include Mr. Muller and Mr.  
23 Farrugia.

24 THE COURT: I don't think there's any risk of  
25 confusion there. I thought your reference in opening about

1 how you were graciously going to allow them to call your  
2 witnesses was pretty swift myself.

3 But I think you've already had the benefit of that.  
4 And I don't think there's any need for further explanation.  
5 They're clearly going to be your witnesses, and I don't  
6 anticipate any confusion. So I don't think an appropriate --  
7 I don't think an instruction is appropriate.

8 MR. BATCHELDER: All right. Thank you, sir.

9 THE COURT: All right.

10 All right. With regard to the two issues that we  
11 took up in chambers this morning, the Court's given this  
12 considerable thought; and with regard to the two issues  
13 presented this morning, the Court's ruling is as follows:

14 With regard to the video played from Apple's CEO  
15 Tim Cook yesterday and his reference to one-click purchasing  
16 of apps, the Court does not view that that opens the door to  
17 admission of the Amazon one-click license; and that request  
18 by the Defendant is overruled.

19 The Court has considered the effect of that video  
20 in light of the likely effect of the one-click license and  
21 believes that the prejudicial effect would far outweigh any  
22 probative value, and the Court does not believe the door has  
23 been opened.

24 With regard to the incorporation of the Wiser  
25 patent by reference and the Ansell patent and the

1 preservation or non-preservation of Wiser as a surviving  
2 prior art reference, at the end of the day, the Court is  
3 convinced that despite the adoption of it by reference, in  
4 that they're charting by the Defendant, that when the parties  
5 made a final election of surviving prior art references, they  
6 did not specifically include Wiser as a part of their Ansell  
7 reference; they did not disclose Ansell in combination with  
8 Wiser, although they did disclose Ansell in combination with  
9 other prior art references.

10 I think the Defendant could have removed all doubt  
11 by simply disclosing in the surviving references Ansell in  
12 combination with Wiser.

13 The Court has real concerns about allowing one  
14 reference to incorporate what may be named by reference  
15 within it and what may be named by reference within what was  
16 named by reference and how far down that process it goes, and  
17 to do otherwise, I think makes the election process somewhat  
18 meaningless.

19 Therefore, after much consideration, I'm going to  
20 conclude and order that the election of the Ansell prior art  
21 reference by the Defendants in their election of surviving  
22 final prior art references does not include Wiser and that  
23 Mr. Ansell will be limited to testify as to the Ansell patent  
24 and its four corners, and the proposed slides and argument  
25 from the Defendants that come directly from Wiser are not

1 permitted.

2 All right. As I understand, we recessed yesterday  
3 with Mr. Mills on the stand, and the Defendant was ready to  
4 begin cross-examination. Does that meet with everybody  
5 else's recollection?

6 MR. BATCHELDER: Yes, sir.

7 THE COURT: All right. Mr. Mills, return to the  
8 witness stand, please.

9 And, Mr. Batchelder, you may return to the podium.

10 And during the interim, we'll bring in the jury.

11 Oh, just a minute, Ms. Mayes. Before you bring in  
12 the jury, we did not read into the record the exhibits that  
13 were used from the list of pre-admitted exhibits during  
14 yesterday's portion of the trial.

15 Counsel, let's do that as quickly as possible.

16 MR. CALDWELL: Your Honor, while they're doing  
17 that, may I talk to one of my colleagues about the rulings we  
18 just discussed?

19 THE COURT: Yes.

20 (Pause in proceedings.)

21 MR. CASSADY: May it please the Court.

22 THE COURT: Proceed.

23 MR. CASSADY: The list of exhibits is long, and I  
24 apologize. It's PX 11; PX 18.001 to PX 18.012, and  
25 that's through -- that's 1 through 12; PX 18.014 through PX

1 18.032; PX 20.001 through PX 20.011; PX 22.003; PX 28.006;  
2 PX 28.023; PX 28.034; PX 34.001; PX 36.001; PX 36.002;  
3 PX 37.009; PX 50; PX 51.002; PX 51.003; PX 51.004; PX 53;  
4 PX 54.001 through PX 54.006; PX 57.005; PX 57.009; PX 59;  
5 PX 94; PX 96; PX 100; PX 102.001; PX 103.002; PX 103.003;  
6 PX 103.026; PX 103.027; PX 103.028; PX 103.039; PX 103.040;  
7 PX 103.041; PX 103.044; PX 105.013; PX 108; PX 203.001  
8 through PX 203.006; PX 204; PX 205.001 through PX 205.005;  
9 PX 211; PX 212; PX 223; PX 224; PX 225; PX 226; PX 227; and  
10 PX 228.

11 And with that, we'd offer those, Your Honor.

12 THE COURT: Any objection from the Defendant?

13 MR. POST: No objection, Your Honor.

14 THE COURT: All right. Do you have a similar  
15 rendition to read into the record?

16 MR. POST: Yes, Your Honor.

17 THE COURT: Please proceed.

18 MR. POST: Defendants seek admission of DX 126; DX  
19 302; PX 34.001; PX 054.002; PX 205.002; and PX 205.003.

20 THE COURT: Any objection from the Plaintiff?

21 MR. CASSADY: No, Your Honor.

22 THE COURT: All right.

23 MR. POST: And, Your Honor, very briefly, we spoke  
24 with -- with Plaintiffs' counsel. Yesterday one exhibit was  
25 inadvertently included in the list that wasn't used with any



1 witness, and that was PX 154. Neither party believes that  
2 that should be admitted into evidence. It was pre-admitted,  
3 but shouldn't be included, Your Honor.

4 THE COURT: Do you agree, Mr. Cassady?

5 MR. CASSADY: No objection, Your Honor.

6 THE COURT: All right. Then those items from the  
7 list of pre-admitted exhibits, as identified and as agreed  
8 to, are considered a part of the record in this case.

9 All right. Now let's bring in the jury.

10 COURT SECURITY OFFICER: All rise for the jury.

11 (Jury in.)

12 THE COURT: Welcome back, Ladies and Gentlemen.

13 Please be seated.

14 We concluded yesterday and recessed for the evening  
15 with the Plaintiff having passed its witness, Robert Mills,  
16 who's now on the witness stand. We'll proceed with  
17 cross-examination of Mr. Mills by the Defendant.

18 Mr. Batchelder, you may proceed.

19 MR. BATCHELDER: Thank you, Your Honor.

20 ROBERT MILLS, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

21 CROSS-EXAMINATION

22 BY MR. BATCHELDER:

23 Q. Mr. Mills, good morning.

24 A. Good morning, Mr. Batchelder.

25 Q. The consulting firm that you work for is charging \$495

1 an hour for your work in this case, correct?

2 A. Yes, sir.

3 Q. And you received your assignment in this case, not from  
4 Smartflash itself, but from its lawyers; is that right?

5 A. Yes, sir.

6 Q. And Smartflash's lawyers asked you to assume that all of  
7 the asserted patents are infringed and that --

8 A. Right.

9 Q. -- all of the asserted claims are valid, correct?

10 A. That is correct, yes.

11 MR. BATCHELDER: Could we show Mr. Mills'  
12 transcript from yesterday starting at Page 128, Lines 2  
13 through 4?

14 Q. (By Mr. Batchelder) This was the third question that Mr.  
15 Cassady asked you.

16 And why are you here today?

17 And you said: I'm here to testify about damages due to  
18 the infringement.

19 Do you see that, sir?

20 A. Yes, sir.

21 Q. And what you're referring to there is infringement that  
22 Smartflash's lawyers asked you to assume had occurred,  
23 correct?

24 A. Yes, sir.

25 Q. You're not here today providing any opinions whatsoever

1 that Apple infringes these patents, correct?

2 A. That's correct.

3 Q. That's outside of your expertise.

4 A. It is, yes.

5 Q. So you don't know whether they infringe or not.

6 A. That's correct.

7 Q. And you're not here providing any opinions whatsoever  
8 that these four patents are valid, correct?

9 A. That is correct also.

10 Q. Also outside of your expertise.

11 A. It is, yes.

12 Q. You were here for Dr. Wecker's testimony yesterday,  
13 correct?

14 A. I was, yes.

15 MR. BATCHELDER: Can we put up the transcript, Page  
16 120, Lines 9 through 13?

17 Q. (By Mr. Batchelder) He was asked: And were you aware  
18 that the parties filed a joint stipulation in this case that  
19 Apple has not identified any design-around, non-infringing  
20 alternatives, and opinions of counsel?

21 Do you see that?

22 A. Yes, sir.

23 Q. And there was some discussion about that.

24 A. I do recall that, yes.

25 Q. All right. Now, in your under --

1 MR. BATCHELDER: Can we leave that up, please?

2 Q. (By Mr. Batchelder) In your understanding, a  
3 design-around, non-infringing alternative would be a change  
4 that someone would make to its own product to render it  
5 non-infringing, correct?

6 A. Yes.

7 Q. Now, if an accused product already does not infringe,  
8 there's no need to change it to make it non-infringing,  
9 right?

10 A. I would agree with that, right.

11 Q. By definition, if a product doesn't infringe, then you  
12 don't need to change it to avoid infringement, right?

13 A. Correct. Yes.

14 Q. If it ain't broke, no need to fix it, right, sir?

15 A. I agree.

16 Q. You talked yesterday about a hypothetical negotiation,  
17 right?

18 A. I did, yes.

19 Q. And you said the date of it would be June 2009, right?

20 A. Yes.

21 Q. Let me ask you to consider the time period just before  
22 that, say May 2009. All right, sir?

23 A. Yes, sir.

24 Q. The iPhone had been on the market for two years,  
25 correct?

1 A. Yes.

2 Q. A fabulously successful product, correct?

3 A. Yes, sir.

4 Q. Arguably, the most successful product in the history of  
5 consumer electronics.

6 A. I'm not certain that I can attest to that, but it  
7 certainly is a successful product, yes.

8 Q. And even under the assumption that Smartflash's lawyers  
9 asked you to make, nothing about the iPhone was infringing  
10 any of the patent claims asserted in this case in May of  
11 2009, correct?

12 A. As far as I know, that's correct, yes.

13 Q. What changed in June 2009, according to the assumption  
14 that Smartflash's lawyers have asked you to make, was that  
15 the iTunes Store offered movie rentals, correct?

16 A. Yes, sir.

17 Q. Now, you were here Monday when I cross-examined  
18 Mr. Racz, correct?

19 A. I was, yes.

20 Q. And you know that he did not invent online sale of  
21 movies, correct?

22 A. I do, yes.

23 Q. And you know he didn't invent the online rental of  
24 movies, correct?

25 A. Yes, sir.

1 Q. And you know he didn't invent charging different prices  
2 for online rental versus online purchases, correct?

3 A. Yes, sir.

4 Q. But the iTunes Store offered movie rentals in 2009, and  
5 Smartflash's lawyers have asked you to assume that that  
6 feature infringes a valid patent claim, correct?

7 A. Yes, sir.

8 Q. Now, what changed in June 2009, again -- again,  
9 according to the assumption that Smartflash's lawyers have  
10 asked you to make, was something about the store, right,  
11 the -- the iTunes Store?

12 A. Yes, sir.

13 Q. But your damages base here for that time period is not  
14 revenues from rentals of movies or sales of movies on the  
15 store, is it?

16 A. No. As I testified, I've excluded those sales from my  
17 analysis.

18 Q. So your damages model is based on revenue from the  
19 iPhone itself, right?

20 A. For a subset of the iPhones, yes.

21 Q. Even though nothing in the iPhone changed in June 2009,  
22 the change is at the store, right?

23 A. Yes, sir.

24 Q. Your damages calculation multiplies a royalty base times  
25 a royalty rate, correct?

1 A. It does, yes.

2 Q. And you rely on a survey number to play a critical role  
3 in your calculation of a royalty base, correct?

4 A. Yes, I would agree with that.

5 Q. You also rely on a survey number to play a critical role  
6 in your calculation of a royalty rate, correct?

7 A. I do rely on the survey data from Dr. Wecker for that,  
8 yes.

9 Q. Okay. You're not a survey expert.

10 A. I am not.

11 Q. And you have no specific training in survey design,  
12 correct?

13 A. I do not. That's correct.

14 Q. You understand that each party has retained a survey  
15 expert in this case, correct?

16 A. Yes, sir.

17 Q. Smartflash retained Dr. Wecker, who we saw yesterday,  
18 correct?

19 A. Yes, sir.

20 Q. And Apple has retained Dr. Dhar, who you understand will  
21 testify for Apple in this case, correct?

22 A. I believe that to be true, yes.

23 Q. Now, you spoke with Dr. Wecker only one time before  
24 signing your opening expert report in this case, correct?

25 A. I think that's correct, yes, before the opening report.

1 Q. And during that conversation, it wasn't just Dr. Wecker  
2 on the phone, Smartflash's lawyers also participated, right?

3 A. They did, yes.

4 Q. Independent of Dr. Wecker, you have no opinion on the  
5 reliability of the surveys you used to calculate your royalty  
6 rate or royalty base, because that's not your expertise,  
7 right?

8 A. Correct. I'm relying on Dr. Wecker for that.

9 Q. But you understand that Dr. Wecker and Dr. Dhar disagree  
10 about whether their respective surveys are reliable, correct?

11 A. Yes, that's true.

12 Q. Okay. And you don't have the survey expertise to pick  
13 sides in that battle, correct?

14 A. That's correct, yes.

15 Q. And yet you have chosen sides, haven't you?

16 A. I wouldn't put it that way, no, sir.

17 Q. You've chosen to disregard Dr. Dhar's surveys, because  
18 Dr. Wecker says they're flawed, right?

19 A. Not entirely, sir. That's not the entire reason.

20 Q. You've chosen not to rely on them, correct?

21 A. Well, he doesn't --

22 Q. Sir --

23 A. -- he doesn't have a survey about value that I could  
24 rely on.

25 Q. Sir, have you --



1 A. He isn't offering that opinion.

2 Q. -- have you chosen not to rely on Dr. Dhar's survey?

3 THE COURT: Counsel, let him finish his answer.

4 MR. BATCHELDER: Thank you, Your Honor.

5 THE COURT: Finish your answer, Mr. Mills.

6 THE WITNESS: Thank you, Your Honor.

7 A. Dr. Dhar didn't do a survey that determines value, so  
8 there was not a survey I could rely on from Dr. Dhar.

9 Q. (By Mr. Batchelder) Dr. Dhar has conducted two surveys  
10 in this case, correct?

11 A. Yes, sir. As far as I know, that's correct.

12 Q. And you've chosen not to rely on either one of them,  
13 correct?

14 A. Well, they're not the kind of survey that I could rely  
15 on for a damages opinion. They don't get to the issues that  
16 I'm trying to address with my model.

17 Q. Dr. Dhar's surveys test the reliability of the  
18 Dr. Wecker survey questions that you rely on in your damages  
19 calculation, correct?

20 A. I understand that that's Dr. Dhar's position, yes.

21 Q. And you don't rely on those Dr. Dhar surveys, correct?

22 A. No, I don't. They don't provide the kind of information  
23 that I need for my model.

24 Q. When Dr. Dhar opines that a given Dr. Wecker survey  
25 question suffers from a flawed design, you're not here to

1 opine as an expert in survey design whether Dr. Dhar's view  
2 on that subject is correct or incorrect. Fair?

3 A. That's true, yes.

4 Q. Now, Dr. Wecker has not performed any royalty  
5 calculation in this case, has he?

6 A. He has not.

7 Q. You've done that.

8 A. I have, yes.

9 Q. Okay. And so it's you, not Dr. Wecker, who's plugging  
10 survey numbers into a damages calculation, correct?

11 A. Yes. Dr. Wecker has performed the surveys, and I'm  
12 relying upon those surveys for my damages calculations.

13 Q. And because it's your damages calculation, you're the  
14 one who needs to take responsibility for ensuring that the  
15 survey numbers that you're using in your calculation are  
16 reliable to measure what you're relying on them to measure.  
17 Fair?

18 A. Yes, that's fair.

19 MR. BATCHELDER: Can we pull up, please, PX 205.002  
20 Page 19?

21 I'd like to show Question 4A.

22 Q. (By Mr. Batchelder) So this is the survey number that  
23 you used to calculate your royalty base, correct, sir?

24 A. This is one of the questions that I used, yes.

25 Q. All right. And the question is: For each device listed

1 below, consider the capability to purchase apps from Apple's  
2 App Store. Did this capability alone motivate you to buy the  
3 device?

4 That's the question, correct?

5 A. It is, yes.

6 Q. Now, it's your understanding that the functionality of  
7 Question 4A is broader than the invention claimed in any of  
8 the four patent claims asserted in this case, correct, sir?

9 A. I really can't speak to how broad the claims are. It's  
10 my understanding that this is the accused feature with  
11 respect to the App Store functionality.

12 Q. Sir, is it your testimony that you don't know one way or  
13 the other whether the capability referenced in Question 4A is  
14 broader in scope than any of the four patent claims asserted  
15 in this case?

16 A. I really can't speak to how broad the scope of the  
17 claims are. It's my understanding that this is the feature  
18 that has been accused of infringement with respect to the  
19 apps, anyway.

20 Q. Did Mr. Racz and Mr. Hulst invent patent applications,  
21 sir?

22 A. Patent applications?

23 Q. Did they invent the idea -- I'm sorry.

24 Did they invent the idea of software applications?

25 A. Oh, no. No, sir. As far as I know, they did not.

1 Q. Did they invent the idea of selling software  
2 applications on an electronic store?

3 A. No, sir.

4 Q. Did they invent the idea of online sale of any kind of  
5 digital content?

6 A. I don't believe so, no.

7 Q. Online payment of digital content, they didn't invent  
8 that either, did they, sir?

9 A. As far as I know, they did not.

10 Q. And they did not invent downloading secure content over  
11 the Internet, did they?

12 A. I don't believe so, no.

13 Q. Including apps, right?

14 A. Correct.

15 Q. Apps are just software applications, right?

16 A. Yes, sir.

17 Q. Sir, to calculate a reasonable royalty for a feature  
18 accused of infringing, you need to apportion as between, on  
19 the one hand, the contribution to that feature made by the  
20 patents-in-suit, and on the other hand, the contributions  
21 made to that feature by the Defendant and others, correct?

22 A. That's certainly the aim, yes.

23 Q. Okay. So even under the assumed infringement theory,  
24 Apple adds value not added by the patents-in-suit to the  
25 process of purchasing apps from Apple's App Store, correct?

1 A. Yes.

2 Q. What value?

3 A. I'm not sure I understand the question. Are you looking  
4 for a quantification or types of value?

5 Q. Types of value.

6 A. Well, Apple has provided the software that is the App  
7 Store functionality. It provides a place for app  
8 distributors to provide their apps. It handles some of the  
9 payment transactions. It also provides the interface for  
10 purchase of apps. Those are some of the items that it  
11 provides.

12 Q. This question, Question 4A that's up on the screen, it  
13 uses the word "motivate," doesn't it?

14 A. It does, yes.

15 Q. How many royalty calculations have you done in your  
16 career, sir?

17 A. I don't have a precise number for you, but dozens.

18 Q. And before this case, you've never once relied on, in  
19 connection with a royalty calculation, a survey that used  
20 that word "motivate," true?

21 A. I -- I think that's correct, yes.

22 Q. Now, there are multiple models of iPad accused in this  
23 case, correct? Those are the tablets. There are multiple  
24 models of them?

25 A. There are, yes.

1 Q. One of them is an iPad Mini?

2 A. Yes, sir.

3 Q. And then there's a more fully featured iPad called the  
4 iPad Air, correct?

5 A. I don't know that I would call it a more fully featured,  
6 but it's a larger footprint.

7 Q. Well, the iPad Air has some features that the iPad Mini  
8 does not have, correct, sir?

9 A. That may be true, depending on the models.

10 Q. You said it may be true. Is it true?

11 A. Well, there are different models of the iPad Mini, so I  
12 think we'd have to compare the precise model that you're  
13 talking about.

14 Q. The iPad Air has something called retina display,  
15 correct?

16 A. It does, yes.

17 Q. And that's -- that's a better display, a higher quality  
18 display, right?

19 A. It's a higher resolution display, yes.

20 Q. Higher resolution display than the one on the iPad Mini,  
21 correct?

22 A. That's correct, yes.

23 Q. The iPad Air has a more powerful processor than the iPad  
24 Mini, correct?

25 A. I can't attest to that, but that would not surprise me.

1 Q. The iPad Air has a higher capability camera than the  
2 iPad Mini, correct?

3 A. I don't recall the precise specification of the camera,  
4 so I can't -- I can't tell you that.

5 Q. Well, the iPad Air has a camera that allows panorama and  
6 zoom functionality that the camera on the Mini does not,  
7 correct?

8 A. I'm not certain.

9 Q. The iPad Air, when released, cost more than the iPad  
10 Mini when it was released, right?

11 A. Yes, sir.

12 Q. Sir, if the capability to purchase apps from Apple's App  
13 Store is available -- well, let me just ask you this: That  
14 capability to purchase apps from Apple's App Store, that's  
15 the capability in Question 4A, correct?

16 A. It is, yes.

17 Q. And that capability is available on both the iPad Mini  
18 and the iPad Air, correct, sir?

19 A. It is, yes.

20 Q. Now, if that capability was the only capability that  
21 motivated a purchase, no one would ever buy the iPad Air,  
22 because they could just get that capability on the Mini,  
23 right?

24 A. I disagree.

25 Q. Why is that, sir?

1 A. Well, because there are other -- there are other  
2 features, like the screen size, for example, that may be  
3 decisions that a consumer that's motivated to purchase based  
4 on apps will ultimately consider in the decision between an  
5 iPad and an iPad Mini, but the motivation can still be the  
6 apps for the purchase.

7 Q. Okay. So it's your position that a given product can  
8 have features that are necessary for the purchase decision  
9 but not motivate the purchase decision?

10 A. Certainly, yes.

11 Q. Now, if -- if the jury rejects that idea, if it rejects  
12 the idea that a product like the iPhone can have features  
13 that are necessary to the purchase decision, but somehow  
14 don't motivate the purchase decision, then they should reject  
15 your use of this Question 4A in your damages calculation, the  
16 way you've used it, correct, sir?

17 A. Well, I wouldn't say that they should reject it, but  
18 they may -- if they disagree with my interpretation, they may  
19 use their own interpretation.

20 Q. You admit, sir, that for a given customer, a given  
21 device could have dozens of must have features, correct?

22 A. Yes, that's possible.

23 Q. A given customer could be unwilling to purchase a  
24 device, even at a discount, if it lacks any one of dozens of  
25 features, correct?



1 A. That's possible, depending on the customer, yes.

2 MR. BATCHELDER: Can we put up PX 203.003, Page 3?  
3 Could we blow up the table, please?

4 Q. (By Mr. Batchelder) All right. So the Row No. 3, that  
5 refers to the App Store, correct, at the end there?

6 A. Yes, sir.

7 Q. And under the iPhone column, we've got 26.9 percent,  
8 right?

9 A. Yes, sir.

10 Q. And you used this number for a two-year period, correct?

11 A. Approximately, yes.

12 Q. Okay. And you're asking this jury to believe that more  
13 than 25 percent of the people who bought iPhones during that  
14 two-year period were motivated only by this one feature, the  
15 ability to buy apps from the App Store. That was it. The  
16 only feature of the phone. That's what you're asking them to  
17 believe?

18 A. The feature that motivated the purchase, yes. That  
19 doesn't mean that there aren't other features that might be  
20 features that a customer would need to have to make the  
21 purchase, but that's the feature that motivated the purchase.

22 Q. You're asking them to believe that of those more than 25  
23 percent of the customers, more than one-fourth of them, they  
24 weren't motivated at all by the ability to make a phone call,  
25 send an email, browse the Internet, send a text message, take

1 a photo, right, sir?

2 A. Those may be criteria that a customer will need in order  
3 to make a purchase; but according to Dr. Wecker's survey,  
4 it's the App Store functionality that motivated the purchase  
5 for approximately a quarter of the people that made the  
6 purchase.

7 Q. If people had answered yes to that Question 4a that we  
8 just looked at, if they were motivated by other features in  
9 addition to the App Store feature, then the way you used this  
10 response to this survey question would be unreliable,  
11 correct, sir?

12 A. Well, people that said they -- they were alone motivated  
13 to purchase based on the App Store functionality were, in  
14 fact, not alone motivated, then I -- I would agree that an  
15 adjustment to the base under that model might be necessary,  
16 but I also have the alternative model with the valuation.

17 MR. BATCHELDER: Can we put up PX 205.002, at Page  
18 20, please? Let's blow up Question 4b, please.

19 Q. (By Mr. Batchelder) This is that value question you were  
20 just referring to, sir; is that right?

21 A. Yes, sir.

22 Q. And you understand that Dr. Dhar did a survey to test  
23 the reliability of that question, correct?

24 A. I understand that he purports to have done a survey to  
25 test that reliability, yes.

1 Q. And you understand that he concluded that it does not  
2 measure what you rely on it to measure, correct?

3 A. I understand that that's what he claims, yes.

4 Q. Let's talk about your royalty rates, sir. For each  
5 asserted patent claim, the logical premise underlying your  
6 royalty rate calculation is that you're using a dividing line  
7 of conduct that on the one hand you assume infringes and on  
8 the other hand the next best alternative, correct?

9 A. Yes, sir.

10 Q. And to you that next best non-infringing alternative is  
11 one that would provide Apple and its customers as much  
12 benefit as possible, correct?

13 A. I think that would be the goal if Apple were to try to  
14 implement a non-infringing alternative, if it had one  
15 available to it.

16 MR. BATCHELDER: Can we put up PX 54.001, Page 50?

17 Q. (By Mr. Batchelder) All right. If we could look at  
18 Question 7. At the beginning here it says: Suppose that no  
19 devices, including the devices that you have purchased,  
20 allowed you to rent and download movies and TV shows from  
21 iTunes or Google Play.

22 Right? Do you see that, sir?

23 A. I do, yes.

24 Q. And then it says: Instead, you could purchase movies  
25 and TV shows at a price around three times what the rental

1 price would have been.

2 Do you see that?

3 A. I do, yes.

4 Q. Okay. So you can't rent. All you can do is buy.

5 That's the alternative, right, sir?

6 A. Yes, sir.

7 Q. And you relied upon that as the next best non-infringing  
8 alternative, correct, sir?

9 A. Yes, sir.

10 Q. But you understand from Dr. Jones that streaming also  
11 would be an alternative, correct?

12 A. I did hear testimony to that effect, yes.

13 Q. Okay. That's a better alternative to be able to rent  
14 streamed content than having to buy it, isn't it?

15 A. It's possible for some consumers that might be better,  
16 but streaming has a lot of limitations. You can't stream  
17 when you're on an airplane, for example, when a lot of people  
18 would like to watch a movie on their iPad. When you don't  
19 have connectivity to the Internet, you're not able to stream.  
20 So that's a disadvantage, I think, for many consumers.

21 Q. Sir, if I'm sitting on my living room couch where I  
22 watch movies, it would be an advantage to me be -- to be able  
23 to stream a rented movie instead of having to buy it, right?  
24 I'd pay less?

25 A. It might be. Depends on the consumer. But overall, I

1 think that the ability to download and view movies is  
2 important for many consumers.

3 Q. Okay. So you didn't rely on an alternative that -- that  
4 would have allowed people to rent movies by streaming them?

5 A. No, I relied on Dr. Jones's next best alternative.

6 MR. BATCHELDER: Can we -- hold on one moment.

7 Q. (By Mr. Batchelder) You were in the courtroom for Dr.  
8 Jones's testimony, correct?

9 A. Yes, sir.

10 Q. And did you see him do a live demonstration using an  
11 iPod Touch to purchase an app on the Apple App Store?

12 A. I did, yes.

13 MR. BATCHELDER: And can we put up the App Store  
14 slide?

15 Q. (By Mr. Batchelder) You understand that the steps that  
16 he demonstrated started with you open your App Store,  
17 correct? That was his first step?

18 A. Yes, sir.

19 Q. And then you click buy, correct?

20 A. Yes.

21 Q. Then you enter your password, correct? And that sends  
22 those three IDs?

23 A. Well, I can't speak to the technical aspects, but that's  
24 my understanding based on the testimony, yes.

25 Q. Okay. And then you download the app, correct? That's

1 Step 4?

2 A. I think that's next, yes.

3 Q. And then you launch the app, correct?

4 A. Yes, sir.

5 Q. Those are the five steps that he demonstrated yesterday,  
6 correct?

7 A. That's my recollection, yes.

8 Q. Now, in your damages calculation, you relied on Dr.  
9 Jones's non-infringing alternative scenarios, right?

10 A. I did, yes.

11 Q. These alternatives were featured in Dr. Wecker's  
12 surveys, right?

13 A. They were, yes.

14 Q. And Dr. Jones yesterday discussed with my colleague,  
15 Ms. Fukuda, alternatives to this, correct?

16 A. Alternatives to the infringement?

17 Q. Alternatives to this five-step process?

18 A. Yes, I believe that they did discuss that.

19 Q. All right.

20 MR. BATCHELDER: Why don't we put up, if we could,  
21 from yesterday's transcript at Pages 21 and 22, starting at  
22 Line 21?

23 Q. (By Mr. Batchelder) So Ms. Fukuda asked yesterday of  
24 Dr. Jones: Well, you in your alternative, you didn't tell  
25 the survey takers that they could -- instead of visiting a

1 separate website to enter payment information; that they  
2 could instead do exactly what they're doing now to purchase  
3 an app, except they don't do it at the moment they try --  
4 they try to down -- they don't do it before download, they  
5 just do it after download. You didn't present that option?

6 And his answer was: That is effectively what I  
7 presented here.

8 Do you recall that testimony, sir?

9 A. Yes, sir.

10 Q. Okay. So this was a discussion about an alternative,  
11 applicable to all the asserted claims -- all four of them,  
12 right?

13 A. I believe that's correct, yes.

14 Q. And so what Dr. Jones proposes here in his testimony and  
15 in his report as an alternative to that five-step process we  
16 just looked at, is transmitting what Smartflash claims is  
17 payment data, those three identifiers, after the download of  
18 content instead of before the download of content, correct?

19 A. I think that's correct, but I can't really speak to the  
20 technical aspects because I'm not an expert in the technology  
21 here.

22 Q. But your understanding, that's what Dr. Jones proposed  
23 yesterday on the stand to this jury, correct?

24 A. I don't recall him proposing that, but I do recall the  
25 discussion, yes.

1 Q. All right. Well, let -- let's take a look at a  
2 side-by-side comparison.

3 So the alternative was open the App Store, correct?

4 A. I believe so, yes.

5 Q. Next step, click buy, correct?

6 A. As far as I know, yes.

7 Q. Next step, download the app, correct?

8 A. Yes.

9 Q. Next step, enter the password, correct?

10 A. I think that's what they discussed, yes.

11 Q. Next step, launch the app, correct?

12 A. Yes, I believe that's correct.

13 Q. Okay. So that's the five-step process that Dr. Jones  
14 said even under the assumptions of Smartflash's lawyers about  
15 what assume -- what's assumed to infringe, that that would be  
16 non-infringing, correct?

17 A. Well, I can't really speak to -- to precisely what Dr.  
18 Jones had in mind because I'm not a technical expert, but my  
19 recollection is that he said that you could implement the  
20 method or the -- the steps that he identified as the next  
21 best alternative without infringing.

22 Q. All right. Let's look at them side-by-side. The first  
23 step is the same, open the App Store, correct?

24 A. Yes, sir.

25 Q. The second step is the same, correct?



1 A. As far as I know, that's correct, yes.

2 Q. The last step is the same, launch the app, correct?

3 A. Yes, sir.

4 Q. And so the only difference is that you flip three and  
5 four, right? What was Step 3 in the App Store process  
6 becomes Step 4 in the Dr. Jones non-infringing alternative,  
7 right?

8 A. Well, I can't speak to whether that's all that's  
9 involved in -- in rendering the system non-infringing. Dr.  
10 Jones is the one that can speak to that.

11 Q. All right, sir. Are you asking this jury to conclude  
12 that Apple would have paid \$852 million to avoid making that  
13 change, flipping that one step?

14 A. Well, I'm not certain that flipping that one step is the  
15 one change that needs to be made.

16 Q. That's exactly what Dr. Jones said yesterday, isn't it?

17 A. Well, I can't speak for Dr. Jones. That doesn't -- I  
18 don't think he said exactly that. He said that he had  
19 identified the next best non-infringing alternative, and  
20 that's what we tested in the survey.

21 Q. Making that switch of that one step would not infringe  
22 any of the claims, right?

23 A. I -- I can't speak to that.

24 Q. Sir, in your opening report -- it should be in a binder  
25 in front of you. Could you turn to that, please? I don't

1 want to put it up, but it's PX 050.

2 You have a summary of materials considered, correct?

3 A. I do, yes.

4 Q. And first of all, are those actually materials that  
5 you've laid your eyes on?

6 A. Many of them, I have. But my staff also helped me.

7 Q. Are those materials that every one of which either you  
8 or your staff has actually read?

9 A. No, sir, I don't believe that's correct, because we also  
10 had access to databases of all of the documents that had been  
11 produced in the case. That's my recollection. And so some  
12 of these documents we may have searched through to look for  
13 information that we thought was relevant to the analysis, and  
14 so we've included them for completeness. But maybe we  
15 haven't read every single page or every single word in those  
16 documents.

17 Q. But there may be some documents in their entirety in  
18 what you call "materials considered" that neither you nor  
19 your staff ever read, correct?

20 A. I can't rule out that possibility, no.

21 Q. Now, that set of materials considered is 50 pages long,  
22 correct?

23 A. Yes, sir.

24 Q. There are thousands and thousands of pages of documents  
25 that you and your staff had access to and searched in this

1 case before you signed your report, correct?

2 A. Yes, sir, that's correct.

3 Q. And when you signed your report, you had not read any  
4 publications, any newspaper or magazine articles, any  
5 industry reports that discuss these patents in any way by  
6 name or number, correct?

7 A. I think that's correct, yes.

8 Q. When you signed your report, you also had not seen any  
9 TV programs, radio reports discussing these patents in any  
10 way by name or number, correct?

11 A. Correct, yes.

12 Q. When you signed your report, you did not know of any  
13 awards that had been given to these patents or to Mr. Racz,  
14 in connection with these patents, correct?

15 A. Yes, sir.

16 Q. Now, in contrast, the accused Apple products have  
17 received a wide variety of industry awards, correct?

18 A. They have, yes.

19 MR. BATCHELDER: Can we put up Defendant's Exhibit  
20 65, please?

21 Q. (By Mr. Batchelder) This is an award from the Press  
22 Association. Apple wins Best Gadget Award for the iPad,  
23 correct?

24 A. It appears to be, yes.

25 Q. And the second sentence says it beat out the Amazon

1 Kindle, right? The iPad beat the Amazon Kindle in competing  
2 for this award?

3 MR. BATCHELDER: Next paragraph.

4 A. Yes, sir, I see that.

5 Q. (By Mr. Batchelder) Now, the Amazon Kindle, that's a  
6 product that Smartflash says practice these patents, correct?

7 A. I'm not certain.

8 Q. You don't know that?

9 A. I don't.

10 Q. If both Amazon and Apple, under Plaintiffs' assumptions,  
11 practice these patents but Apple won this award over Amazon,  
12 the jury could conclude that the success of Apple's products  
13 is due to value that Apple contributed, correct?

14 A. Well, I won't -- I won't fuss with that if -- if you  
15 mean part of the -- the value, yes, certainly.

16 MR. BATCHELDER: Your Honor, may I approach the  
17 easel?

18 THE COURT: You may.

19 MR. BATCHELDER: Thank you.

20 Q. (By Mr. Batchelder) I'm going to ask you to consider a  
21 hypothetical, sir. I'm just going to call this Company A and  
22 Product 1 -- I'll call it P 1, all right? And over here I'm  
23 going to say Company B, and they sell Product 2.

24 Step out of the way for the jury.

25 So Company A sells Product 1, Company B sells Product 2;

1 is that clear?

2 A. Well, I'm having sort of a hard time reading it.

3 Q. Switch it around a little bit.

4 A. That -- that's much better. Thank you.

5 Q. Does that give you room? Is this clear to you?

6 A. It is, except the monitor is cutting off the bottom  
7 half, so if you're going to write much more, then I won't be  
8 able to see.

9 Q. I think that's all I can -- I need to do, sir. Thank  
10 you.

11 A. Thank you, sir.

12 Q. Now, if Product A from Company 1 has been highly  
13 successful, Product B -- or excuse me, if Product 1 from  
14 Company A is highly successful, Product 2 from Company B has  
15 been less successful, but both are said to practice the same  
16 patents, that could indicate that the -- the success of  
17 Product A is attributable to the value that that company has  
18 brought to that product, correct, sir?

19 A. That's certainly possible, yes.

20 Q. And that would be relevant in determining fair value in  
21 a hypothetical negotiation, correct?

22 A. I would agree, yes.

23 Q. But you have not taken into account in this case the  
24 extent to which the Apple accused products were more  
25 successful than other products that Smartflash says also

1 practice the patents-in-suit, correct?

2 A. Yes. I focused on the value that Apple realizes from  
3 its infringement.

4 Q. So your answer to my question is yes?

5 A. Yes, sir.

6 Q. And in this case, you have not taken into account  
7 whether Apple's relative success, as compared to other  
8 companies that Smartflash says practice these same patents,  
9 may indicate that the success of Apple's products results  
10 from value that Apple brings to its products, rather than the  
11 value that the asserted patents have brought to Apple's  
12 products under your assumed infringement theory, correct?

13 A. Yes, sir, I focused on the value that Apple realizes  
14 from its infringement.

15 Q. Again, your answer to my question is yes?

16 A. It is, yes.

17 MR. BATCHELDER: Could we see Defendant's Exhibit  
18 68, please?

19 Q. (By Mr. Batchelder) At the top there it says Apple's  
20 iPhone 4 wins Best Mobile Device Award, correct, sir?

21 A. Yes, I see that.

22 Q. And you've seen this award before, correct?

23 A. I'm not certain that I've seen this particular award,  
24 but I'm certainly aware that -- that Apple has won awards for  
25 the iPhone 4.

1 Q. The first sentence says: A host of hot new Android  
2 phones from Samsung, LG Electronics, HTC, Sony Ericsson made  
3 their debut at this Mobile World Congress 2011, correct?

4 A. Yes, sir.

5 Q. Then it goes on to say: But it was the relatively  
6 venerable iPhone 4 from Apple that was named the show's best  
7 mobile device, correct?

8 A. Yes, I see that.

9 Q. Now, Smartflash says Samsung's Android phones practice  
10 the patents-in-suit, correct?

11 A. Yes, sir.

12 Q. Those are mentioned here, correct?

13 A. They are, yes.

14 Q. Smartflash says HTC's Android phones practice the  
15 patents-in-suit, correct?

16 A. Yes, sir.

17 Q. But Apple's iPhone 4, which Smartflash also says  
18 practices the patents-in-suit, beat Samsung's phones and  
19 HTC's phones to win this Best Mobile Device Award, correct,  
20 sir?

21 A. Yes, sir.

22 Q. One of the products that Smartflash says practice the  
23 patents-in-suit that's not an Apple product but a Samsung  
24 product, is the Samsung Media Hub, correct?

25 A. Yes, sir.

1 Q. It was an electronic store selling digital content,  
2 right?

3 A. Yes, sir.

4 Q. Including movies and TV shows for rental and purchase,  
5 right?

6 A. That's my recollection, yes.

7 Q. The Samsung Media Hub failed to generate a profit,  
8 right?

9 A. That's my recollection, yes.

10 Q. It was such a failure that Samsung ultimately dropped it  
11 as an offering, right?

12 A. Well, I believe Samsung still offers the app  
13 functionality, but it did drop part of the functionality,  
14 yes.

15 Q. Overall, up through the filing of the complaint in this  
16 case, Samsung's content platforms have not been profitable,  
17 correct?

18 A. That's correct, yes.

19 Q. Whereas, Apple's has.

20 A. Yes, sir.

21 Q. And Smartflash says Apple's platforms practice the  
22 patents-in-suit. That's the assumption you've been asked to  
23 make, right?

24 A. Yes, sir.

25 Q. And Smartflash says that Samsung's content offerings



1 practice the patents-in-suit, correct?

2 A. Yes, sir.

3 Q. Apple's have succeeded; Samsung's has not, correct?

4 A. That's true.

5 Q. Another of the products that Smartflash says practice  
6 the patents-in-suit, again, not an Apple product, this time  
7 an HTC product, is called HTC Watch, correct?

8 A. Yes, sir.

9 Q. It was an electronic store selling digital content,  
10 correct?

11 A. Video content, yes.

12 Q. Including movies, TV shows for rental and purchase,  
13 right?

14 A. Yes, sir.

15 Q. It was a content store, correct?

16 A. Yes.

17 Q. Not profitable, correct?

18 A. That's true.

19 Q. Closed down earlier this year, correct?

20 A. I -- I believe it closed down even earlier than this  
21 year, yes.

22 Q. HTC lost millions of dollars on HTC Watch, correct?

23 A. It did, yes.

24 Q. Yet Smartflash says that HTC Watch practiced the  
25 patents-in-suit, right?

1 A. Yes.

2 Q. Just like it says Apple practiced the patents-in-suit,  
3 right?

4 A. Correct.

5 Q. Apple's content stores have succeeded, correct?

6 A. They have, yes.

7 Q. HTC Watch failed, correct?

8 A. It did, yes.

9 Q. You mentioned yesterday the Georgia-Pacific analysis,  
10 correct?

11 A. Yes, sir.

12 Q. Factor 1 in Georgia-Pacific are the royalties received  
13 by the patentee for the licensing of the patents-in-suit,  
14 correct?

15 A. Yes, sir.

16 Q. By the time of the hypothetical negotiation in 2009, the  
17 royalties received by the patentee for the licensing of the  
18 patents-in-suit were zero dollars, right, sir?

19 A. Yes, but two of the patents-in-suit hadn't issued.  
20 That's an important consideration as well.

21 Q. Zero dollars for the ones that had, right?

22 A. For the one that had, yes.

23 Q. And the same is true as of the filing of this lawsuit,  
24 correct? The royalties received by the patentee for the  
25 licensing of all four of the patents-in-suit -- or excuse

1 me -- all four of the claims associated with the three, are  
2 zero dollars, right?

3 A. Yes, sir. No one had taken a license at that time.

4 Q. Smartflash has never licensed any of the patents-in-suit  
5 to a company that makes smartphones, correct?

6 A. That's correct.

7 Q. Or tablets, correct?

8 A. Yes, sir.

9 Q. Or music players, correct?

10 A. Yes, sir.

11 Q. You mentioned Chalfont yesterday, right?

12 A. I did, yes.

13 Q. Chalfont was an entity that was set up to license  
14 certain Smartflash technology, correct?

15 A. Yes, sir.

16 Q. And it entered into zero licenses, correct?

17 A. Correct. With respect to patent licenses, that's  
18 correct. I'm not -- I can't speak to other kinds of  
19 licenses.

20 Q. Zero patent licenses, right?

21 A. That's correct. It predated the patent's issuance.

22 Q. Zero licenses to patent rights under the application  
23 that existed at the time, right?

24 A. That's right.

25 Q. You mentioned that Chalfont had a plan that it would

1 seek royalty payments of \$4 per device and 10 cents per card,  
2 right?

3 A. Yes, sir.

4 Q. You cited that in your August 25th opening report,  
5 right?

6 A. I did, yes.

7 Q. And I took your deposition a month later in September,  
8 correct?

9 A. Yes, sir.

10 Q. And you had no opinion as to whether \$4 for a licensed  
11 player device would have been a reasonable royalty at the  
12 time, correct?

13 A. Yes. As I told you, I hadn't done that analysis.

14 Q. In terms of money generated from that model of Chalfont,  
15 the grand total was zero dollars, correct?

16 A. Yes. It predated the patent's issuance.

17 Q. Now, sir, if -- if the jury in this case rejects as  
18 unreliable the way that you've apportioned the royalty base,  
19 then the jury should reject your damages calculation,  
20 correct?

21 A. Well, my royalty calculation involves a rate and a base,  
22 so if -- if one were to conclude that the rate -- or that the  
23 base, rather, is -- is overstated, for example, then I would  
24 agree that an adjustment should be made.

25 Q. And same on the rate. If the jury rejects as unreliable

1 the way you've apportioned the rate, the jury should reject  
2 your damages calculation, correct?

3 A. Well, I think it depends on -- depends on what they  
4 think. There might be an adjustment that might be necessary  
5 if they think that it's unreliable. I believe it to be  
6 reliable, though.

7 Q. All right, sir. Let's come back to Mr. Racz's testimony  
8 that you watched here on Monday.

9 You heard him describe a 2009 negotiation with a company  
10 called Saranite, correct?

11 A. Yes, sir.

12 Q. And 2009 was the year in which the hypothetical  
13 negotiation that you've talked about would have taken place,  
14 right?

15 A. Yes, June of 2009.

16 Q. And the deal that was under consideration between Mr.  
17 Racz and Saranite is that he would sell 80 percent of the  
18 patent rights for \$350,000, correct?

19 A. That sounds right, but I haven't committed all the  
20 specific terms to memory. But that sounds right.

21 Q. Okay. And -- and that included all the continuations to  
22 the '720 patent, correct?

23 A. I would need to see the document to be certain on that.

24 Q. Okay. Will you accept my representation that it did,  
25 sir?

1 A. Certainly, yes.

2 Q. Thank you.

3 And by the way, Mr. Racz was willing to enter into this  
4 deal, right?

5 A. My recollection is that -- that the deal had progressed  
6 to a certain point, and then there was an attempt to  
7 renegotiate, and so the deal ultimately wasn't consummated.

8 Q. Now, Mr. Racz was willing to enter into it, but it was  
9 actually Saranite who decided it was paying too much and  
10 wanted to pay a lower price, correct?

11 A. I can't speak to what Saranite believed. We haven't  
12 heard anything about what Saranite believed, so I don't know.

13 Q. But it told Mr. Racz it thought it was paying too much,  
14 and it asked to pay fewer dollars, correct?

15 A. I can't tell you what it told Mr. Racz. I don't think  
16 we've heard that.

17 Q. Okay. All right. Well, let me just come back to the  
18 flip chart.

19 So we have 80 percent, \$350,000. I'm going to call that  
20 350K, all right? 80 percent and 350K, right?

21 A. Yes, sir.

22 Q. Sir, do you have a calculator with you?

23 A. I do.

24 Q. I'd like to ask you to help me with some math. I'm  
25 going to come down here and ask you, what number would you

1 need to multiply times 80 percent to get to a hundred  
2 percent?

3 A. 1.25.

4 Q. 1.25, did you say?

5 A. Yes, sir.

6 Q. And would you calculate, please, sir, what \$350,000 is  
7 times 1.25?

8 A. It is \$437,500.

9 Q. \$437,500. Did I hear you right?

10 A. That's the math, yes.

11 Q. \$437,500, you would agree with me, sir, that's quite a  
12 bit lower than \$852 million, isn't it?

13 A. Certainly, yes.

14 MR. BATCHELDER: Your Honor, I pass the witness.

15 THE COURT: Redirect.

16 MR. CASSADY: Your Honor, may we briefly approach?

17 THE COURT: You may.

18 (Bench conference.)

19 MR. CASSADY: Your Honor, I would never want to  
20 presume that I could talk about this in front of the jury,  
21 and that's why I wanted to ask you. Mr. Batchelder  
22 insinuated that Mr. Mills was assuming infringement and  
23 assuming validity because we told him to.

24 I assume Your Honor is going to tell them that he  
25 had to assume that, at the end of the case. And so I want to

1 be able to redirect him on the fact that the law requires him  
2 to assume validity and assume infringement. I probably would  
3 have let it go if it happened once, but he went through it  
4 five or six times. And I think it's necessary, given the  
5 confusion that's been put in.

6 MR. BATCHELDER: I have no objection to that, Your  
7 Honor.

8 THE COURT: All right. Then proceed.

9 MR. CASSADY: Okay.

10 THE COURT: Anything else?

11 MR. CASSADY: No, Your Honor.

12 THE COURT: Okay.

13 MR. CASSADY: Thank you.

14 (Bench conference concluded.)

15 THE COURT: All right. Let's proceed with  
16 redirect.

17 REDIRECT EXAMINATION

18 BY MR. CASSADY:

19 Q. Good morning, Mr. Mills.

20 A. Good morning.

21 Q. You were asked some questions about assumptions that  
22 apparently I gave you, or at least Mr. Batchelder believed I  
23 gave you; is that fair?

24 A. I think so, yes.

25 Q. Specifically, you were given a cross insinuating that I



1 told you to assume infringement and I told you to assume  
2 validity. Does that sound fair?

3 MR. BATCHELDER: Objection, argumentative.

4 THE COURT: Overruled.

5 A. Yes.

6 Q. (By Mr. Cassady) Okay. Is the Court in this case and  
7 the law -- is the Court going to instruct this Court and this  
8 jury that you were supposed to assume validity and  
9 infringement in doing your analysis?

10 A. Well, I'm not sure what the Court will instruct. I  
11 mean, that -- that's certainly up to the Court. But my  
12 experience has been that that's often the instruction that  
13 will be given, yes.

14 Q. Right. Your understanding is that's the law, right?

15 A. Yes, that is my understanding for purposes of damages.

16 Q. You would agree it's improper to insinuate that you were  
17 just doing what the lawyers told you to, right?

18 A. I would -- I would agree it's -- as -- as somebody that  
19 calculates damages in cases like this, that's an assumption  
20 that I'm always asked to make. It's -- it's necessary for a  
21 damages analysis.

22 Q. And the Defendant's damages expert, he makes that same  
23 assumption, doesn't he?

24 A. Yes, he does.

25 Q. And damages experts in every case make that assumption,

1 don't they?

2 A. They have to, yes.

3 Q. Okay. You were asked some questions about  
4 non-infringing alternatives. Do you remember that?

5 A. Yes, sir.

6 Q. Okay. Is it your understanding that Apple didn't  
7 disclose any non-infringing alternatives in this case?

8 A. That's my understanding, yes.

9 Q. Okay. And where does that understanding come from?

10 A. From a stipulation between the parties.

11 Q. So Apple agreed that they had no non-infringing  
12 alternatives?

13 A. Yes, sir.

14 Q. Have you ever had a party agree to something like that  
15 in a case before?

16 A. I -- I don't recall ever seeing a stipulation like that.

17 Q. It's pretty rare, isn't it?

18 A. In my experience, yes.

19 Q. Now, Mr. Mills, you were asked some questions about  
20 alternatives that Dr. Jones proposed, fair?

21 A. Yes.

22 Q. Isn't it true that Dr. Jones testified you couldn't just  
23 flip Steps 3 and 4? Didn't he say that just yesterday?

24 A. I don't recall precisely what he said, so I'm hesitant  
25 to attest to that; but my recollection is there was some

1 discourse about what it would take to avoid the infringement.

2 Q. Let me ask you a different question then. If Apple  
3 could have flipped Steps 3 and 4, do you think they would  
4 have done it by now?

5 A. If it were that easy, I would expect that they would,  
6 yes.

7 Q. Okay. If designing around the infringement in this case  
8 were as easy as just flipping Steps 3 and 4, do you think  
9 there would be a stipulation from Apple that they had no  
10 non-infringing alternatives?

11 A. I would find that surprising.

12 Q. You were asked some questions about the retina display  
13 and processor speed and camera quality and a few other  
14 features. Do you remember that?

15 A. I do, yes.

16 Q. Okay. Now, Dr. Wecker -- Wecker asked a question in his  
17 analysis about the non-infringing alternatives, right?

18 A. Yes, sir.

19 Q. Okay. So if a company --

20 MR. CASSADY: Well, strike that.

21 Q. (By Mr. Cassady) Could Apple keep all of those  
22 features, the retina display, the processor speed, the  
23 camera, in the non-infringing alternative proposed to the  
24 jury -- or, sorry, to the iPhone users?

25 A. Yes. The -- the survey question was designed in a way,

1 as I understand it, to -- to keep all of those other features  
2 in tact, so there's no -- no difference between the actual  
3 scenario and the hypothetical that the survey respondents  
4 were asked to consider.

5 Q. And if you were to compare the differences between  
6 Apple's products as they are currently designed and how  
7 they'd be designed if the non-infringing alternative was put  
8 into place, do the retina displays, processor speeds, and  
9 camera quality, do they just go away?

10 A. No, there'd be no change to those features at all.

11 Q. Okay. And does the value of those features, the retina  
12 display, the camera, the processor speed, other various  
13 aspects, are those included in your damages calculations?

14 A. Yes, those values are taken into account.

15 Q. Okay. And who's getting the credit for those values in  
16 your analysis?

17 A. Apple is.

18 Q. Okay. Is Smartflash getting that credit?

19 A. No, sir.

20 Q. You were asked questions about the reason for using the  
21 word motivate in the surveys. Do you remember that?

22 A. Yes, sir.

23 Q. I think the insinuation was that you had never used it  
24 before, or you couldn't remember ever using that word before;  
25 is that fair?

1 A. It is, yes.

2 Q. Okay. Mr. Mills, what is your understanding as to the  
3 source of the word motivate? Where did that come from?

4 A. My understanding is that it comes from the law.

5 Q. Now, in this case, Mr. Mills, you relied on a survey to  
6 calculate damages, correct?

7 A. Several surveys, yes.

8 Q. Is that the first time you've used a survey to calculate  
9 damages before?

10 A. No, sir.

11 Q. Okay. Is this the first time Apple's been in a case  
12 regarding surveys and damages?

13 A. No, sir.

14 Q. Okay. Has Apple ever used a survey to try and calculate  
15 damages for patent infringement of its competitors?

16 A. Yes. Apple has used surveys in -- in lawsuits that it's  
17 been involved with against its competitors.

18 Q. Now, Mr. Mills, you were asked questions about Company A  
19 and Company B on the flip chart. Do you remember that?

20 A. I do, yes.

21 Q. Okay. And I think the insinuation was that a company  
22 with a feature competing with another company with a feature,  
23 that could never be the distinction between the companies; is  
24 that fair?

25 A. I think so, yes.

1 Q. Could you please tell the jury reasons that Company A  
2 having the feature and Company B also having the feature  
3 could have nothing to do with why the product -- one product  
4 failed versus the other?

5 Let me ask it a different way.

6 Could you please explain to the jury why Company A's  
7 success with a feature could still indicate value even though  
8 Company B has the feature?

9 A. Certainly. Let me give you a concrete example. We  
10 talked about HTC Watch and how that service ultimately wasn't  
11 successful. But the thing that's important to keep in mind  
12 is that HTC Watch was competing directly with Google Play,  
13 which is the largest source of -- of content for the Android  
14 ecosystem, and -- and Apple doesn't have that kind of  
15 competition. Apple has a closed system where it -- it is the  
16 only provider of apps for its devices, and so it's not facing  
17 that same competition that HTC is.

18 Q. Okay. And in this case, with regards to Company A and  
19 Company B, what does timing have to do with the success of  
20 introduction of a feature?

21 A. Well, timing can play an important role. If you're  
22 first -- first to market with a feature, for example, that  
23 might give you an advantage over competitors.

24 Q. Okay. And do we have evidence in this case that that,  
25 in fact, happened, that one competitor put this feature in

1 first and that that feature is what ended up increasing  
2 market share?

3 A. Yes. I'm thinking back to the Samsung document that we  
4 presented yesterday towards the end of the day, and that  
5 showed that when the App Store was introduced, there was a  
6 significant increase in -- in sales of the iPhone.

7 Q. Mr. Mills, you were asked questions about the offer that  
8 Mr. Racz ultimately didn't enter into with, I think,  
9 Saranite. Is that the company?

10 A. That's my recollection, yes.

11 Q. Okay. Is it appropriate to make that calculation to  
12 determine what the overall value of that agreement was?

13 A. It's certainly not appropriate to make that calculation  
14 to determine the value of the patents that are at issue here.

15 Q. And do they -- did Mr. Racz and Saranite actually enter  
16 into this agreement?

17 A. No, they did not.

18 Q. Okay. At the time of that negotiation, was the '772 and  
19 the '221 patent, were they issued?

20 A. No, they had not issued.

21 Q. And were you here when Mr. Racz testified regarding his  
22 partner that got involved and helped him with his prosecution  
23 of his patents?

24 A. Yes, sir.

25 Q. Okay. Do you remember how much money Mr. Racz said that

1 that investor and partner had to put in to help prosecute the  
2 patents at the Patent Office?

3 A. I don't recall a specific figure, but I think it was in  
4 the millions of dollars.

5 Q. So there was significant investment in continuing to  
6 prosecute these patents after this, right?

7 A. Absolutely, yes.

8 Q. And the two patents in this case -- or two of the  
9 patents in this case, the '221 and the '772, were the result  
10 of that, right?

11 A. That's my understanding, yes.

12 Q. Okay. Mr. Mills, can you please, again, tell the jury  
13 your conclusion for the structure and the size of the  
14 infringement -- or the damages for the infringement in this  
15 case?

16 A. Well, I've -- I've calculated damages based on a running  
17 royalty structure. I think that's reasonable here. And I've  
18 concluded that damages are \$852 million for the infringement.

19 Q. When you did that 852 million analysis, did you just  
20 take the highest numbers you could?

21 A. No. In fact, there were many instances where I took,  
22 like as I testified yesterday, the lower bound of the  
23 confidence intervals in Dr. Wecker's survey, so I actually  
24 used numbers that were lower than the point estimates.

25 Q. Okay. And if you had used the mean that Dr. Wecker



1     calculated, rather than the lower bound confidence interval,  
2     what would your analysis come out to?

3     A.     Well, if I had used Dr. Wecker's point estimates or the  
4     means rather than the lower bound, the damages would be about  
5     a hundred -- about \$1.19 billion, using the same model that I  
6     presented.

7     Q.     Thank you, Mr. Mills.

8             MR. CASSADY: I pass the witness, Your Honor.

9             THE COURT: Additional cross-examination?

10            MR. BATCHELDER: Thank you.

11            THE COURT: Proceed.

12                               RECROSS-EXAMINATION

13     BY MR. BATCHELDER:

14     Q.     Sir, when you watched and heard Dr. Wecker's testimony  
15     yesterday, you didn't hear any mention of Dr. Dhar, did you?

16     A.     I don't recall him being asked about Dr. Dhar.

17     Q.     Dr. Wecker, Smartflash's survey expert, didn't mention  
18     Dr. Dhar or criticize or critique his work in any way,  
19     correct?

20     A.     I don't recall him being asked about that.

21     Q.     Sir, if the jury here finds there's no infringement  
22     because Apple's systems work differently, better than the way  
23     these patents say to do what they say, the damages they  
24     should award would be zero, correct?

25     A.     Well, if there's no finding of infringement, then I

1 think damages are zero, yes.

2 Q. And if the jury finds that the asserted patent claims  
3 here are invalid, Mr. Racz didn't invent what those claims  
4 say, again, the jury should award zero dollars in damages,  
5 correct?

6 A. I would agree, yes.

7 MR. BATCHELDER: Your Honor, I pass the witness.

8 THE COURT: Further redirect?

9 MR. CASSADY: Your Honor, I'll be brief.

10 THE COURT: That's fine, Counsel.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. CASSADY:

13 Q. Mr. Mills, if Apple took the 350,000-dollar deal and the  
14 Saranite deal for the 20 percent royalty and \$350,000 up  
15 front -- I don't want you to calculate it -- but would that  
16 be higher or lower than your damages analysis in the case, as  
17 applied to total revenue?

18 A. Are you asking me to assume that Apple would have paid  
19 20 percent?

20 Q. If Apple got the deal that it just proposed up here,  
21 that it pays \$350,000 for these patents and then 20 percent  
22 on all infringing units, would it be higher or lower than the  
23 number you've calculated here?

24 A. Well, it would be significantly higher.

25 Q. Now, Mr. Mills, I just want to step through a couple of

1 things here very quickly.

2 In this analysis --

3 MR. CASSADY: And, Your Honor, may I approach the  
4 easel?

5 THE COURT: You may.

6 Q. (By Mr. Cassady) In this analysis that you did, what  
7 was the percentage of infringing products that Apple got 100  
8 percent of the credit for?

9 A. 77 percent of the products were excluded from the  
10 royalty base.

11 Q. Smartflash doesn't get a penny from the revenue for  
12 those units, right?

13 A. That's correct, under the model that I presented.

14 Q. And how much revenue from content sales does Smartflash  
15 get?

16 A. I haven't applied any royalty to those sales, so it  
17 would be zero.

18 Q. Okay. So Apple gets free and clear the content revenue?

19 A. Yes, sir.

20 Q. Now, in this analysis you did, you only used movies and  
21 the App Store surveys to calculate damages, right?

22 A. Yes, sir.

23 Q. But there are other content types that are infringed by  
24 Mr. Racz's patents, right?

25 A. Yes, there are books and -- and music.

1 Q. What revenue does Smartflash get from books and music to  
2 the extent they motivate people to buy products?

3 A. I haven't calculated a royalty on that at all, so it  
4 would be zero. Apple gets all of that. I'm sorry, but I  
5 can't see the -- the board, so if I'll need to see it, then  
6 it will have to be moved a little bit.

7 Q. I wrote in music and books motivation.

8 A. Okay. Thank you.

9 Q. Is that fair?

10 A. It is.

11 Q. Okay. And then what we discussed at the very end of  
12 your last -- last few questions, you used the lower bound of  
13 the 95 percent confidence interval, right?

14 A. I did, yes.

15 Q. So they get the difference between the lower bound and  
16 the mean in this case, right?

17 A. Yes.

18 Q. Okay. And what was that -- what was the difference in  
19 millions between the point estimate and the mean -- and the  
20 lower bound?

21 A. Well, the difference is about \$350 million.

22 Q. Okay. Is it fair if I say, 350 million conservative  
23 assumption of surveys?

24 A. Yes.

25 Q. And, finally, Mr. Mills, Dr. Wecker's surveys are not

1 the only surveys in this case, are they?

2 A. No. Apple has produced a large number of surveys  
3 itself.

4 Q. And Apple did not create a single survey for this case,  
5 either through Dr. Dhar or at their business unit. They gave  
6 you the value estimates you were looking for in this case.

7 Right?

8 A. That's correct.

9 Q. Okay.

10 MR. CASSADY: I pass the witness, Your Honor.

11 THE COURT: Further cross-examination?

12 MR. BATCHELDER: Nothing further, Your Honor.

13 Thank you.

14 THE COURT: All right. You may step down, Mr.  
15 Mills.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Ladies and Gentlemen, we're going to  
18 take a brief recess at this point. You may leave your  
19 notebooks -- your juror notebooks in your chairs.

20 Don't discuss the case among yourselves. Follow my  
21 other instructions.

22 We'll be back in about 10 minutes to continue with  
23 the next witness. You're excused for recess at this time.

24 COURT SECURITY OFFICER: All rise for the jury.

25 (Jury out.)

1 THE COURT: The Court stands in recess for  
2 approximately 10 minutes.

3 (Recess.)

4 (Jury out.)

5 COURT SECURITY OFFICER: All rise.

6 THE COURT: Be seated, please.

7 All right. Is the Plaintiff prepared to call the  
8 next witness?

9 MR. CASSADY: Your Honor, the next few witnesses  
10 will be by deposition.

11 THE COURT: All right. Let's bring the jury in,  
12 and we'll proceed.

13 COURT SECURITY OFFICER: All rise for the jury.

14 (Jury in.)

15 THE COURT: Please be seated.

16 Plaintiffs call your next witness.

17 MR. CASSADY: Your Honor, the Plaintiffs have a few  
18 depositions we would like to play as our next witnesses, the  
19 first of which, if Your Honor would please, is Mr. Alan Ward  
20 from Apple.

21 THE COURT: How long do you anticipate that video  
22 clip to be, Counsel?

23 MR. CASSADY: I've got the total number, Your  
24 Honor, of the six depositions. It's 16-and-a-half minutes  
25 for Smartflash, and it's 6-and-a-half minutes for Apple.

1 THE COURT: And there are six witnesses by  
2 deposition?

3 MR. CASSADY: Yes, Your Honor.

4 THE COURT: All right. Well, let's proceed with  
5 the first one; and if you like, between them, you can  
6 introduce and identify the next one before it starts.

7 MR. CASSADY: I appreciate it, Your Honor.

8 THE COURT: All right. Let's proceed.

9 (Video clip playing.)

10 QUESTION: Will you please state your full name for  
11 the record?

12 ANSWER: My name is Alan Ward.

13 QUESTION: Where do you work, Mr. Ward?

14 ANSWER: I work at Apple.

15 QUESTION: How long have you worked at Apple?

16 ANSWER: 12 years.

17 QUESTION: What is your current job title?

18 ANSWER: Engineering manager.

19 QUESTION: What's the purpose of MZ Buy looking up  
20 account information in the Oracle database?

21 ANSWER: To verify that the account exists and that  
22 it's in good standing.

23 QUESTION: From MZ Buy's perspective, what does it  
24 mean for an account to be in good standing?

25 ANSWER: It means that you do not have any

1 transactions for which you receive goods but did not settle  
2 payment.

3 QUESTION: What's the relation between a DSID and  
4 an Apple ID?

5 ANSWER: It's one-to-one.

6 QUESTION: What does one-to-one mean?

7 ANSWER: Each Apple ID has a DSID. The DSID is  
8 immutable. The Apple ID, the name on the account is mutable.

9 QUESTION: What's the point of having DSIDs given  
10 that Apple has Apple IDs?

11 ANSWER: What most people consider to be the Apple  
12 ID is really the user name or the email address or whatever  
13 they're typing in; whereas the DSID is an immutable number  
14 associated with the account that will remain the same even  
15 when the email address changes.

16 QUESTION: Do you have any actual knowledge  
17 yourself that the legal department at Apple actually reviews  
18 other companies' patents when Apple develops new features?

19 ANSWER: I don't have any knowledge specifically  
20 myself of that.

21 QUESTION: Did you read through Smartflash's  
22 patents?

23 ANSWER: I briefly skimmed them.

24 QUESTION: What were your thoughts about  
25 Smartflash's patents after your brief skim of them?



1           ANSWER: Thought I'm not a patent attorney, and I'm  
2 not qualified to judge these.

3           QUESTION: How much time did you spend reading  
4 Smartflash's patents?

5           ANSWER: As I said, I didn't read them through  
6 because I'm not qualified to read patent documents.

7           QUESTION: How much time did you spend skimming  
8 Smartflash's patents?

9           ANSWER: Maybe 15, 20 minutes.

10          QUESTION: How did you receive Smartflash's  
11 patents?

12          ANSWER: They were sent to me yesterday.

13          QUESTION: By whom?

14          ANSWER: By counsel.

15          QUESTION: Apple's lawyers?

16          ANSWER: And outside.

17          QUESTION: Apple's inside and outside counsel?

18          ANSWER: I would say specifically Apple's outside  
19 counsel.

20          QUESTION: And was Apple's outside counsel there  
21 with you when you were skimming Smartflash's patents for 15  
22 or 20 minutes?

23          ANSWER: Yes.

24          QUESTION: Has there ever been a scenario at Apple  
25 where a patent attorney or Apple's in-house counsel told you

1 to do something or not do something based on another  
2 company's patent?

3 ANSWER: I can't think of a specific occasion where  
4 I've been told to do something differently, no.

5 QUESTION: When you looked at Smartflash's patents,  
6 how much time did you spend looking at them?

7 ANSWER: I think 15 to 20 minutes.

8 QUESTION: And did you understand the technology  
9 that was being described in Smartflash's patents?

10 ANSWER: I wasn't trying to understand the patents.

11 QUESTION: Why not?

12 ANSWER: Because I'm not a patent attorney.

13 (End of video clip.)

14 MR. CASSADY: May it please the Court.

15 THE COURT: Proceed.

16 MR. CASSADY: Your Honor, the Plaintiffs call by  
17 deposition Augustin Farrugia. He's a senior director for  
18 digital rights management technology at Apple.

19 THE COURT: Proceed.

20 (Video clip playing.)

21 QUESTION: Will you please introduce yourself on  
22 the video record?

23 ANSWER: I'm Augustin Farrugia.

24 QUESTION: What is your title today?

25 ANSWER: Senior director, DRM Technologies.

1 QUESTION: Mr. Farrugia, how many people report to  
2 you today?

3 ANSWER: Let me count. If I've got to give you a  
4 number, roughly, around 30.

5 QUESTION: Is the content itself, once encrypted,  
6 different because one is a rental and one is a purchase?

7 ANSWER: Nope. Identical.

8 (End of video clip.)

9 MR. CASSADY: May it please the Court.

10 Your Honor, the next witness that the Plaintiff  
11 calls is Christopher Bell. Mr. Bell is the senior director  
12 related to iTunes marketing at Apple.

13 THE COURT: Proceed.

14 (Video clip playing.)

15 QUESTION: Please state your name for the record.

16 ANSWER: My name is Chris Bell.

17 QUESTION: Who are you currently employed by?

18 ANSWER: Apple, Inc.

19 QUESTION: How long have you worked for Apple,  
20 Inc.?

21 ANSWER: 11-and-a-half years.

22 QUESTION: Would you say your career has been more  
23 on the marketing side or the technical side or a mix?

24 ANSWER: On the marketing side.

25 QUESTION: So after you became the director of

1 iTunes marketing -- is that the position you're in today?

2 ANSWER: I'm currently senior director of iTunes  
3 marketing.

4 QUESTION: Well, the first time you heard about  
5 this lawsuit, was it this year or last year?

6 ANSWER: This year.

7 QUESTION: Okay. So other than sitting down with  
8 counsel and walking through the patents, did you review them  
9 on your own?

10 ANSWER: No, I didn't.

11 (End of video clip.)

12 MR. CASSADY: Your Honor, the Plaintiffs call  
13 Mr. Payam Mirrashidi by deposition. And he is an engineering  
14 director at Apple working on iTunes.

15 THE COURT: Proceed.

16 (Video clip playing.)

17 QUESTION: Good morning, sir.

18 Can you please state your name and address for the  
19 record?

20 ANSWER: My name is Payam Mirrashidi.

21 QUESTION: How long have you been at Apple?

22 ANSWER: I've been at Apple since 2002.

23 QUESTION: And how long were you a director of  
24 engineering?

25 ANSWER: I've been a director of engineering for

1 about five to six years now.

2 QUESTION: How many people do you manage now?

3 ANSWER: About 200.

4 QUESTION: So what does MZ Buy or MZ Finance do  
5 with the information that it gets back from its search  
6 against the pod database or the DS database?

7 ANSWER: When the information is looked up using  
8 the DSID, we get back -- we create in Java code and memory an  
9 object called MZ Account, which is the object that  
10 encapsulates some of the information of the account.

11 We use that to go through a series of validation  
12 tests to make sure that that customer's account is in good  
13 standing and in a position to purchase an item using either  
14 their gift card credit or credit card information if a new  
15 session is created.

16 QUESTION: Can you think of any other examples of  
17 validation tests?

18 ANSWER: One of the things we check is whether the  
19 customer has any xCard credit.

20 (End of video clip.)

21 THE COURT: Counsel, before you play the next  
22 video, do we have tech people here for either of the parties  
23 that can mute the television sets so we don't get the  
24 feedback and muffled sound between the speakers and the  
25 television sets themselves?

1 Is there simply a mute button somebody can push?

2 MR. CASSADY: Your Honor, can you give me one  
3 moment to confer?

4 THE COURT: Yes.

5 (Counsel confer.)

6 THE COURT: If we can, fine. If we can't, I won't  
7 drag this out, but -- and I don't know if it is affecting the  
8 jury's ability to hear it very clearly.

9 MR. CASSADY: Your Honor, apparently, if we mute  
10 the televisions, it will mute all the sound.

11 THE COURT: Then let's go like we were.

12 MR. CASSADY: I apologize, Your Honor.

13 THE COURT: Not a problem. We're all making the  
14 best with what we have to work with.

15 Let's proceed.

16 MR. CASSADY: Your Honor, the next witness we call  
17 is Mr. Sean Kelly. Mr. Kelly works at Apple with iTunes and  
18 the iOS operating system.

19 MR. CALDWELL: I'm sorry. I was trying to push the  
20 volume button.

21 (Video clip playing.)

22 QUESTION: Good morning.

23 Can you please state your name and address for the  
24 record?

25 ANSWER: My name is Sean Kelly.

1 QUESTION: Sir, how long have you worked at Apple?

2 ANSWER: I started as an intern in 2005, and then I  
3 started full time in 2006.

4 QUESTION: What's your current title?

5 ANSWER: Individual Contributor Level 5.

6 QUESTION: Okay. Going back to the question about  
7 DRM impacting local content, how does DRM impact whether you  
8 can play local content?

9 ANSWER: When the media system on iOS tries to do  
10 playback with DRM, it has to call in to FairPlay in order to  
11 actually be able to play back the content.

12 So if the device doesn't have the rights to play  
13 the content, then the playback will fail.

14 QUESTION: What application on the iOS device is  
15 making the call with the core media to determine whether it  
16 can play back content?

17 ANSWER: I don't think the apps make a call to  
18 determine if they can play the content. They just attempt to  
19 play it, and the playback fails.

20 QUESTION: And what apps would those be?

21 ANSWER: The music and the videos apps. Also the  
22 iBooks app in the case of DRM books.

23 QUESTION: But the user doesn't press a button that  
24 says FairPlay, check if I can play this; is that right?

25 ANSWER: Correct. There is no user interface to

1 trigger a FairPlay check.

2 QUESTION: And would the product page also include  
3 descriptive information about the movie?

4 ANSWER: Yes.

5 QUESTION: What's included in the successful  
6 purchase response?

7 ANSWER: The response would include any -- any  
8 updates to the FairPlay keybag that are required to play the  
9 assets. And then it would include a series of  
10 representations of the assets.

11 So in the case of a movie, there would be only one.  
12 But if you bought an album, for example, you would get all of  
13 the tracks from the album. For each asset, it includes two  
14 URLs -- at least two URLs to download the assets.

15 So it would include a URL for high-quality artwork.  
16 It would include a URL for the actual media asset itself.  
17 And then it would include any other FairPlay information  
18 that's needed to deprotect that asset or play the asset such  
19 as the Sinf or the Pinf that we mentioned before.

20 And, finally, it would include the metadata for the  
21 item. So things like the title, the artist, the director of  
22 movies, things like that.

23 QUESTION: Do you know why Apple offers the option  
24 to rent a movie?

25 ANSWER: I mean, it was a business decision. I



1 don't know the background behind it.

2 QUESTION: What's your understanding of why Apple  
3 offered the option to rent a movie?

4 ANSWER: I think a lot of people only watch movies  
5 once, so they may want to rent something for less money than  
6 buying it to keep forever.

7 QUESTION: In the case where a user has  
8 authenticated a device and selects an item to purchase, you  
9 described that the client sends a purchase request to the  
10 iTunes server; is that correct?

11 ANSWER: Yes.

12 QUESTION: And in that request, the iTunes client  
13 includes the DSID; is that correct?

14 ANSWER: Yes.

15 QUESTION: When the iTunes client is retrieving the  
16 DSID to put into that request, is it reading it from the  
17 iTunes Store D key value store database?

18 ANSWER: The first time that iTunes Store D needs  
19 to access information about the account, it loads it from  
20 that database into its memory. And then the account  
21 information would be cached in memory. So most of the time  
22 it's getting DSID out of memory.

23 QUESTION: What other pieces or parts of this  
24 mechanism would enforce these restrictions?

25 ANSWER: So we've discussed enforcement in the

1 stores. So then there's also enforcement in the libraries  
2 themselves. So there's enforcement in the music and video  
3 apps, and SpringBoard on the home screen, and then in iBooks  
4 on the bookshelf.

5 QUESTION: Can you describe the enforcement in each  
6 of those applications?

7 ANSWER: So starting with SpringBoard for  
8 applications, SpringBoard queries the launch services  
9 database via the API that the launch services team provides  
10 to get the applications that are installed on the system.

11 Part of the information that launch services  
12 provide is the content rating for the application which we  
13 received when the user downloaded the application as part of  
14 the purchase response.

15 SpringBoard compares that to the current  
16 restriction setting and then hides the application if the  
17 application is restricted.

18 QUESTION: And would SpringBoard read the current  
19 setting the same way as the iTunes Store application via a  
20 call to manage configuration?

21 ANSWER: Yes.

22 QUESTION: Can you describe the process for the  
23 music app, please?

24 ANSWER: The music app reads -- it loads the items  
25 for display from its media library database, so that's a

1 SQLite database. When it is doing that querying, it loads  
2 the current restriction values from the manage configuration  
3 at API.

4 It uses those values to add predicates on to the  
5 queries it makes against the database to filter out items  
6 that are restricted so that they do not appear in the user  
7 interface. They're just completely gone.

8 QUESTION: Can you explain what you mean by adding  
9 predicates to the queries?

10 ANSWER: When -- when the music app wants to  
11 display a list of items to the user, it creates a query  
12 against the database where it has certain rules. You know,  
13 it might be songs by The Beatles, if you're looking at The  
14 Beatles page in the application.

15 So, in addition to saying, you know, load songs  
16 from The Beatles, it would add predicates saying load songs  
17 from The Beatles with a restriction value less than this.

18 QUESTION: So when the user selects the music  
19 application, it does the check and then either displays or  
20 doesn't display items based on the comparison of the rating  
21 of the items themselves and the current settings; is that  
22 accurate?

23 ANSWER: When the SQLite engine is evaluating the  
24 query, it's comparing the value from a manage configuration  
25 API with the value of the content restriction that's in the

1 database for that entry that's in that item. The music app  
2 only then ever sees the items that met that restriction.

3 QUESTION: Okay. So the distinction that you're  
4 drawing is that it's not the music application itself  
5 directly that's doing the comparison, but then it's the  
6 SQLite engine that's doing this evaluation?

7 ANSWER: Yes.

8 QUESTION: So when the user selects a music  
9 application, the music application can only display or  
10 present items where the content rating of the item satisfies  
11 the current setting as determined by the SQLite engine?

12 ANSWER: Correct.

13 QUESTION: Can you describe how the video app  
14 enforces these restrictions?

15 ANSWER: The video app uses the same technique as  
16 the music app. So it's also querying the media library  
17 database, and it adds predicates to the query to filter out  
18 restricted items.

19 QUESTION: Just to be clear, if a restricted item  
20 is filtered out, the user can't access it from somewhere else  
21 on the device?

22 ANSWER: Correct. The asset is still physically  
23 present on the device. It does not appear in the user  
24 interface. It is not accessible.

25 QUESTION: Can you describe how this process works

1 for items on the iBooks bookshelf?

2 ANSWER: iBooks stores the content rating for the  
3 items in its database, and it compares that against the value  
4 that it gets from manage configuration and filters the books  
5 from the shelf.

6 QUESTION: Is its database also a SQLite database?

7 ANSWER: I don't know.

8 QUESTION: Is it your understanding that it's a  
9 SQLite database?

10 ANSWER: I believe it is, yes.

11 QUESTION: Other than reading the content ratings  
12 from its separate database, would the technique be similar to  
13 that of the music app and the video app?

14 ANSWER: As far as I know, yes.

15 QUESTION: Do you know if there's a policy or  
16 handbook at Apple that requires engineers to cooperate with  
17 Apple regarding the intellectual property?

18 ANSWER: Apple does have a business conduct policy.

19 QUESTION: Do you know the general provisions that  
20 the business conduct policy contains regarding intellectual  
21 property?

22 ANSWER: If questions come up, that we should  
23 consult with Apple legal.

24 QUESTION: Do you have a direct contact in Apple  
25 legal?

1 ANSWER: What do you mean by a direct contact?

2 QUESTION: Is there a specific person that your  
3 team reports to or communicates with at Apple legal?

4 ANSWER: Not that I'm aware of.

5 QUESTION: Have you reviewed Smartflash's patents  
6 in this case?

7 ANSWER: Yes, briefly.

8 QUESTION: About how much time did you spend  
9 reading them?

10 ANSWER: 15 or 20 minutes.

11 QUESTION: And the 15 or 20 minutes that you spent  
12 reviewing Smartflash's patents were when?

13 ANSWER: Yesterday.

14 QUESTION: In your role at Apple, do you do  
15 anything to make sure that Apple's products are not  
16 infringing other companies' patent rights?

17 ANSWER: If I had questions about it, I would  
18 consult with Apple legal, but it's not part of my day-to-day  
19 responsibilities.

20 QUESTION: So in your day-to-day responsibilities,  
21 do you consider or take into account other companies' patents  
22 when you're developing products?

23 ANSWER: We trust that Apple legal will be  
24 monitoring that. So engineering in general, me specifically,  
25 we do not.

1           QUESTION: So you wouldn't run any patent searches  
2 before you started developing a product or a feature?

3           ANSWER: Correct. We would leave that to Apple  
4 legal.

5           QUESTION: Do you do anything to make sure that  
6 Apple legal has all the proper information to determine  
7 whether other companies' patent rights need to be considered  
8 before the implementation or development of a feature of a  
9 product?

10          ANSWER: I know that Apple legal is looped in on  
11 new feature development. I personally am not involved in  
12 that communication.

13          QUESTION: And earlier in the day, do you recall  
14 being asked some questions about something called the iTunes  
15 Store D key value store?

16          ANSWER: Yes.

17          QUESTION: And I believe you testified that there  
18 was account information that was stored in that database.

19               Did I get that right?

20          ANSWER: Yes.

21          QUESTION: Can you tell me what type of account  
22 information is stored on that database?

23          ANSWER: iTunes Store D would store the Apple ID  
24 for the account, the user's full name, the account ID -- also  
25 known as the DSID -- the type of the account, whether it's an

1 AOL account or regular Apple account, some flags on the  
2 account, such as whether it's enabled for redownload and  
3 iTunes match. And that may be about it.

4 QUESTION: Okay. Do you know whether any billing  
5 information is stored in the iTunes Store D key value store  
6 database?

7 ANSWER: We do not store billing information, no.

8 QUESTION: Would the user use either Apple ID or  
9 DSID to make a purchase in the iTunes Store?

10 ANSWER: The DSID is required on the purchase  
11 request. The purchase request also requires the X token or  
12 the strong token that we discussed earlier. In order to get  
13 a strong token, you need to have entered your Apple ID and  
14 password.

15 (End of video clip.)

16 MR. CASSADY: Finally, by deposition, Your Honor,  
17 last deposition, Mr. Mark Buckley. And Mr. Buckley is a  
18 finance manager at Apple. That's our last deposition, Your  
19 Honor.

20 THE COURT: Proceed with the witness by deposition.

21 (Video clip playing.)

22 QUESTION: Good morning.

23 Could you please state your full name for the  
24 record?

25 ANSWER: Mark Buckley.



1 QUESTION: And who do you work for?

2 ANSWER: Apple, Inc.

3 QUESTION: What is your job title?

4 ANSWER: Finance manager.

5 QUESTION: And are you aware this is a case about  
6 patent infringement?

7 ANSWER: I'm aware this is a patent infringement  
8 case.

9 QUESTION: Have you ever read Smartflash's patents?

10 ANSWER: No.

11 QUESTION: Why not?

12 ANSWER: My understanding are the patents are very  
13 technical documents, and I don't read them.

14 (End of video clip.)

15 MR. WARD: That's the end of the deposition, Your  
16 Honor.

17 THE COURT: All right. Plaintiffs, call your next  
18 witness.

19 MR. WARD: Plaintiff calls Apple through its  
20 corporate rep -- corporate representative, Max Muller.

21 THE COURT: All right. Mr. Muller, if you'll come  
22 forward and be sworn.

23 (Witness sworn.)

24 THE COURT: Please have a seat on the witness  
25 stand.

1                                    MAX MULLER, PLAINTIFFS' WITNESS, SWORN

2                                    DIRECT EXAMINATION

3    BY MR. WARD:

4    Q.    Good morning, sir.

5    A.    Good morning.

6    Q.    My name is Johnny Ward, and you and I have not met  
7    before today, have we?

8    A.    No, sir, we have not.

9    Q.    And would you please introduce yourself to the jury?

10   A.    Sure.   I'm Max Muller.

11   Q.    And you've been selected by Apple to be its corporate  
12   representative during this trial; is that correct?

13   A.    Yes, sir, correct.

14   Q.    And you had your deposition taken back in August of  
15   last -- last year, 2014?

16   A.    That -- that sounds about right, yes.

17   Q.    And at that time, you were the senior engineering  
18   director at Apple.   Are you still in that position?

19   A.    Yes, I'm still senior engineering director at Apple.

20   Q.    And are you able to read computer code?

21   A.    Yes.   Yes, I am.

22   Q.    And would you characterize your position as senior --  
23   senior engineering director as being in the upper band of  
24   management at Apple?

25   A.    Yes, I would.

1 Q. And you understand that because Smartflash has sued  
2 Apple -- these are both companies, and they're only able to  
3 speak through representatives, right?

4 A. That's my understanding, yes.

5 Q. Companies are made up of people; and when they get to  
6 trial, sometimes they have to select a person to speak on  
7 their behalf. And you're that person for Apple, correct?

8 A. Correct.

9 Q. Is Apple an innovative company?

10 A. Yes, I would -- I would characterize Apple as -- as an  
11 innovative company.

12 Q. We've heard a little bit about that during the trial,  
13 haven't we?

14 A. Yes, yes.

15 Q. Is it easy to get a job at Apple, or is it something  
16 that's kind of difficult to do?

17 A. It's -- it's challenging, yes.

18 Q. Does Apple try to hire the best and brightest when it  
19 makes its hires?

20 A. Oh, absolutely.

21 Q. Does it have talented employees?

22 A. Very talented, sir.

23 Q. Smart employees?

24 A. Very smart employees, yes.

25 Q. Does it write its own computer code?

1 A. Yes, yes, yes, we do.

2 Q. Would you agree with me that there's probably no one who  
3 knows Apple's computer code better than the folks at Apple  
4 who write it?

5 A. Yes, I would agree with that.

6 Q. So as far as telling the jury who would be in a better  
7 position to tell us exactly how Apple's products and computer  
8 code works, folks within Apple would be in a better position  
9 than folks outside Apple, generally speaking. Would you  
10 agree with that?

11 A. Yes, I would. That's why I'm here.

12 Q. How many software engineers does Apple employ?

13 A. I don't know the specifics on the software engineers,  
14 but in -- I would estimate in the tens of thousands.

15 Q. Tens of thousands?

16 A. Probably around that.

17 Q. That know how to read computer code?

18 A. Probably around that, yes.

19 Q. Did you see this chart that was prepared by Dr. Jones  
20 when he testified?

21 A. Yes, I saw it yesterday.

22 Q. Where he went through and he examined various pieces of  
23 evidence, including Apple's computer code, correct?

24 A. Correct.

25 Q. You're not here to dispute a single element that Dr.

1 Jones told this jury was met by Apple's computer code, are  
2 you, sir?

3 A. That's correct. I'm here to explain about Apple and its  
4 products.

5 Q. And nor will there be one of these tens of thousands of  
6 software engineers that will take the stand on Apple's behalf  
7 and dispute anything that Dr. Jones told this jury about how  
8 Apple's computer code works, will there?

9 A. That's correct. We've asked experts here to -- to make  
10 that determination.

11 Q. Do you know anything about mineral interests?

12 A. A little bit.

13 Q. All right. You understand in East Texas, there are  
14 quite a few oil and gas fields?

15 A. I grew up in Oklahoma, so, yes, I'm well aware.

16 Q. All right. And Oklahoma, as well, aren't there?

17 A. Oh, yes.

18 Q. And I might own a piece of property -- and I've outlined  
19 it here. Let's assume that that's a 250-acre tract, okay?  
20 Are you with me?

21 A. I'm following you.

22 Q. And I've got a deed to that property; and it says I own  
23 the minerals, 100 percent of them under that piece of  
24 property. Are you with me?

25 A. Sure.

1 Q. You understand that's what a mineral deed does for the  
2 individual who possesses it?

3 A. Again, I'm not an expert, but I'll take your word for  
4 it.

5 Q. Growing up in Oklahoma, do you have a sense that it  
6 might take a lot of money to drill an oil well or drill a gas  
7 well if you wanted to undertake that expense?

8 A. Sure, yes.

9 Q. If you wanted to drill an oil well in East Texas, hire a  
10 rig, hire a crew, come out and finish it, you're talking  
11 about millions of dollars, aren't you?

12 A. Yes, sir.

13 Q. Yet just because if I own that -- that piece of property  
14 and I've got a deed and I own the minerals under it, yet I  
15 don't have enough money to hire my own drilling company and  
16 come out and complete a well, doesn't mean that an oil and  
17 gas company can show up, drill a well, and take my minerals,  
18 does it?

19 A. No, sir, it does not.

20 Q. If they drill a well on my property, they've got to pay  
21 me a royalty, don't they?

22 A. If you'd entered into an agreement for that, then, yes,  
23 they would.

24 Q. They can't avoid paying a royalty by saying that they  
25 didn't know that they were on my property when they drilled

1 their well, can they?

2 A. I don't believe so, sir.

3 Q. Just saying: Oh, I didn't know about your deed, sorry.

4 We've got one of the greatest wells of all time; but we

5 didn't know about your deed, so we're not going to pay you.

6 That wouldn't be a defense, would it?

7 A. No, sir, it would not.

8 Q. Same is true for patents, isn't it, Mr. Muller?

9 A. That's my understanding.

10 Q. So if Smartflash has a patent and it covers a piece of

11 intellectual property, Apple doesn't get to show up, use the

12 property, and then say, oh, we didn't know about it, we're

13 not going to pay you anything for using your property.

14 That's not a defense to patent infringement. You

15 understand that, don't you?

16 A. Yes, I understand.

17 Q. And you'd agree with me that if the jury disagrees with

18 Apple and determines that Apple infringes and that these

19 patents are valid, that it owes a reasonable royalty. Would

20 you agree with that?

21 A. Yes.

22 Q. Now, one of Apple's defenses in this case is that it

23 doesn't infringe, right?

24 A. Yes, that's my understanding.

25 Q. And does it believe strongly in that defense, Mr.

1 Muller?

2 A. Yes, I believe it does.

3 Q. You believe so?

4 A. I believe so, yes.

5 Q. So if we look at Smartflash's property, Apple says we're  
6 not on Smartflash's property, doesn't it?

7 A. Yes, sir.

8 Q. And, in fact, did you hear Mr. Batchelder during his  
9 cross-examine of -- cross-examination of Mr. Mills talking  
10 about the stipulation and asking Mr. Mills that you don't  
11 have to come up with a non-infringing alternative if you  
12 don't infringe? Do you remember that line of questions?

13 A. Yes, sir, I do.

14 Q. And so that's why Apple entered into a stipulation that  
15 it doesn't infringe because --

16 MR. WARD: Or, I'm sorry. Strike that.

17 Q. (By Mr. Ward) It entered into a stipulation that there's  
18 no non-infringing alternative because it doesn't infringe;  
19 is -- is that right?

20 A. I don't -- I don't know the particulars of the  
21 stipulation.

22 Q. I'll show it to you. Can you read that?

23 A. Yes, I can, sir.

24 Q. And you agree with me a stipulation is an agreement,  
25 right?



1 A. Yes, sir.

2 Q. So up until today, at least, this has been Apple's  
3 agreement that it does not -- it has not identified any  
4 design-around, non-infringing alternative in opinion of  
5 counsel, right?

6 A. Correct.

7 Q. And when you had your deposition taken back in August,  
8 prior to that deposition, you spent about 30 minutes prior to  
9 the deposition looking at Smartflash's patents; is that  
10 right?

11 A. Yes, sir, about -- yeah, 30 minutes would be correct.

12 Q. And that was the day before your deposition was taken,  
13 correct?

14 A. Yes, sir.

15 Q. And you understand this lawsuit has been on file since  
16 May of 2013?

17 A. Yes, sir.

18 Q. So between May of 2013 and August of 2014, prior to the  
19 day of your deposition, you'd not looked at the patents,  
20 correct?

21 A. That's correct, sir.

22 Q. Another defense that Apple has is invalidity. Do you  
23 understand that?

24 A. Yes, sir.

25 Q. So if the jury disagrees with Apple's position and it

1 decides that Apple is actually on the property, Apple says  
2 that the deed that Smartflash has, its patent is no good,  
3 right?

4 A. That's my understanding of -- of invalidity, yes.

5 Q. And you understand that when you ask a jury to  
6 invalidate a patent like these, that that's permanent? You  
7 understand that, right?

8 A. I'm -- I'm not aware of the specifics, but sounds  
9 correct.

10 Q. Let me show you a statement that was made by Mr.  
11 Albritton during voir dire.

12 MR. WARD: Page 56. I'm sorry, can we switch? Mr.  
13 Mortensen, Page 56?

14 Q. (By Mr. Ward) And you were here during voir dire,  
15 weren't you, Mr. Muller?

16 A. Excuse me, I'm sorry, which -- which part?

17 Q. Were you here during voir dire when we stood up and we  
18 each had just a few minutes to briefly describe what we  
19 thought the case was about and then Apple got a chance to  
20 describe what they thought the case was about? You recall  
21 that?

22 A. Oh, yes, sir, sorry.

23 Q. All right. And you can read along with me.

24 This is Mr. Albritton: What you're going to hear in  
25 this case is from this gentleman here to my left, Max

1 Muller --

2 That's you, correct?

3 A. That is me, yes.

4 Q. -- who was Employee No. 1 who worked on the iTunes  
5 Store. And Max Muller and two very other senior engineers  
6 from Apple are going to come here to Tyler. They're going to  
7 sit right there in that witness stand and they're going to  
8 explain to you about all the hard work and how they developed  
9 the App Store, how they developed the --

10 THE COURT: Slow down a little bit, Counsel.

11 You're reading awfully fast.

12 Q. (By Mr. Ward) The iTunes Store and how they developed  
13 the way to pay for that protected content. So Mr. Ward is  
14 right, and he -- he's right. He and I have known each --  
15 each other for years and years, and there's definitely a  
16 fundamental disagreement. It's Apple's hard work, the hard  
17 work of Max Muller that resulted in these products, not the  
18 patents of Mr. Racz.

19 Did I read that correctly?

20 A. Yes, sir, you did.

21 Q. So in a little while we're going to hear about the hard  
22 work that you and these other engineers put into iTunes and  
23 the App Store; is that right?

24 A. I hope so.

25 Q. If that drilling company is out there on my property and

1 they've hit this motherload of an oil well and it took them a  
2 lot of -- lot of hard work, they worked really hard, they  
3 broke off several strings, it took them months and months,  
4 they spent lots of money and worked really hard and had this  
5 great oil well, is that a defense to paying me if they're on  
6 my property?

7 A. If they're on your property, no.

8 Q. So if the jury determines that you did work really hard  
9 and Apple worked really hard to develop these products -- and  
10 I don't dispute that you did -- that has nothing to do with  
11 whether or not Apple infringes on Smartflash's patents, does  
12 it?

13 A. No, sir, it doesn't.

14 Q. Hard work's not a defense to patent infringement, is it?

15 A. No, sir, it's not.

16 Q. Similarly, the invalidity defenses that Apple asserts in  
17 this case, none of those defenses are based upon a product  
18 manufactured by Apple that somehow predates Smartflash's  
19 patents and somehow invalidates them, is it?

20 A. I'm -- I'm not the expert on invalidity. We'll have  
21 that up later.

22 Q. Okay. And I'll represent to you that Apple has not  
23 indicated that there's any product that either you developed  
24 or anybody else at Apple developed that inva -- invalidates  
25 Smartflash's patents, okay? You with me?

1 A. Yes.

2 Q. I'll make that representation to you. If that's  
3 correct, then all the hard work, however admirable it is that  
4 you and other engineers did, that won't be relevant to  
5 invalidity, will it?

6 A. I don't believe so, no.

7 Q. And I think we heard some testimony earlier, in fact  
8 when Mr. Racz was being cross-examined, about a problem that  
9 was well-known in the industry back in 1999 of piracy of  
10 digital content, do you recall that?

11 A. Yes, sir, I -- I do recall.

12 Q. And at the time that iTunes was finally unveiled where  
13 it had digital rights management features to it, where it was  
14 protecting that content, that was around, what, 2003, 2004?

15 A. The iTunes Store launched in April of 2003.

16 Q. And so whatever protections were on there for -- to  
17 protect digital content, it was four or five years earlier  
18 that Mr. Racz filed his patent to address this known problem  
19 of data piracy, correct?

20 A. Yes, that's correct.

21 Q. Years ahead of the iTunes launch, correct?

22 A. Yes, sir.

23 Q. And the App Store and the iTunes Store have been huge  
24 successes, haven't they?

25 A. Very much so.

1 Q. They were -- the success of the App Store -- were you  
2 here during the video where Mr. Cook was speaking?

3 A. Yes, I was actually sitting in the audience there, as  
4 well, so...

5 Q. You were in the audience?

6 A. Yes, sir, I was.

7 Q. And did you hear him say that it was astounding?

8 A. Yes, yes, I did.

9 Q. Mind-boggling?

10 A. Yes.

11 Q. And unthinkable, right?

12 A. Yes, sir.

13 Q. And that was in 2012, right?

14 A. That was in 2012, WWC.

15 Q. The success of this technology was unthinkable in his  
16 words, correct?

17 A. Yes, sir.

18 Q. Now, under invalidity, there's a couple of different  
19 ways to invalidate a patent. You know that generally?

20 A. Again, I'm -- I'm not -- I'm not on our patent legal  
21 team. I'm -- I'm not an expert in these matters, so I -- but  
22 if you'd like to represent and I can see if I agree, then  
23 sure.

24 Q. You understand that our jury, they're not patent experts  
25 either, right?

1 A. No, I understand that.

2 Q. You -- you -- they were here -- you were here during  
3 voir dire, and we didn't have any patent experts on the  
4 panel, did we?

5 A. No, sir, we didn't.

6 Q. So to the extent these are new concepts for you, you'd  
7 agree with me that they were new concepts to the jury,  
8 correct?

9 A. Correct.

10 Q. And one of the invalidity defenses that you have is  
11 something called anticipation; is that right?

12 A. That's -- that's my understanding.

13 Q. And then another one is obviousness; is that right?

14 A. I -- I believe so.

15 Q. And then the third one is the lack of a written  
16 description; is that right?

17 A. I -- I -- I don't know about the third one for sure.

18 Q. You understand that when Smartflash filed its patent  
19 applications, there were Examiners at the Patent and  
20 Trademark Office who were charged with examining Smartflash's  
21 applications and determining whether or not that they thought  
22 the inventions claimed in the patent applications were new,  
23 novel, and unique, right?

24 A. That's my understanding of what the Patent Office does,  
25 yes.

1 Q. And the Examiners in the Patent Office are trained to  
2 look at the prior art, right?

3 A. Yes, I believe so.

4 Q. And they are trained to look and see if they think  
5 there's another reference that invalidates the inventions  
6 that are claimed in the patents, correct?

7 A. I -- I believe so.

8 Q. And they're trained to look and determine whether or not  
9 there can be a combination of references to render claims  
10 invalid because they're obvious. You understand they're  
11 trained to do that?

12 A. Again, I'm not -- I'm not an expert on the -- on the  
13 U.S. Patent Office, but, I mean, that sounds reasonable.

14 Q. And do you think they might be trained to look at the  
15 specification and the claims and determine whether or not  
16 there's adequate written description in the patents?

17 A. That seems reasonable.

18 Q. Seems reasonable to you?

19 A. Seems reasonable, yes.

20 Q. And you understand that these patents were filed -- the  
21 original was -- goes back to the application in Great Britain  
22 that was filed in 1999, correct?

23 A. Yes, sir.

24 Q. And the '720 patent was actually filed in 2006.

25 Do you see there?



1 A. January 19th, 2006.

2 Q. And it gets to relate to the Great Britain application.  
3 You understand that?

4 A. Yes, sir.

5 Q. And you see the -- the Examiner there to the right,  
6 Steven --

7 A. Steven -- Steven S. Park; is that right?

8 Q. I think it's Paik, P-I-A-K (sic)?

9 A. Sorry. It looks like an R from here.

10 Q. I agree. It's hard to read.

11 A. Okay. Paik.

12 Q. So that one's in 2006, correct?

13 A. Correct.

14 Q. Now we're looking at the '221 patent. See in the top  
15 right-hand corner?

16 A. Yes, sir, I see that.

17 Q. And that one's November 10, 2010 for the filing date,  
18 correct?

19 A. Correct.

20 Q. And it's got a different Examiner, Thien M. Le.

21 A. Yes. Yes, I see that.

22 Q. And then the last patent that we're talking about is the  
23 '772 patent filed August 2011, and, again, Thien M. Le is the  
24 Examiner, right?

25 A. Yes, sir, he is.

1 Q. So from 2006 through 2011, you've got these three  
2 patents being filed by Smartflash at the Patent Office with  
3 the trained Examiners, right?

4 A. Correct.

5 Q. Two different ones, correct?

6 A. Yes, sir.

7 Q. And during the time that those two Examiners were  
8 examining these patents and looking at the prior art, they  
9 made the same mistakes is what Apple is telling the jury,  
10 right?

11 A. I -- I -- I'm -- I'm not trying to represent that the --  
12 the patent -- yeah -- I mean, what mistakes are you referring  
13 to?

14 Q. Well, you're telling this jury that all these patents  
15 are invalid for the same reasons, that they're anticipated,  
16 they're obvious, and they fail for lack of written  
17 description.

18 A. Yes, sir. Yes.

19 Q. Apple retained a damages expert in this case, Stephen  
20 Becker, correct?

21 A. Yes. Dr. -- Dr. Becker.

22 Q. Dr. Becker.

23 And it also retained a survey expert, Dr. Dhar.

24 A. Yes, correct.

25 Q. We've heard -- heard both of their names, and we'll hear

1 from them during Apple's case --

2 A. That's --

3 Q. -- presumably, correct?

4 A. That's my understanding, yes.

5 Q. Does Apple have its own survey department?

6 A. I'm sorry. Survey department?

7 Q. Yes, sir. Is there some type of department -- I don't  
8 know what it's named -- within Apple that conducts surveys to  
9 measure what consumers think about its products?

10 A. I'm -- I'm on the engineering side within the marketing  
11 group. It would seem like a reasonable function to have  
12 within the marketing group, but I can't speak to -- I don't  
13 know that particular group specifically.

14 Q. So were you not in the courtroom yesterday when  
15 Mr. Cassady stacked up a stack of surveys and referred to  
16 them as the Apple surveys? Did you miss that?

17 A. No. I saw those, yes.

18 Q. So there's somebody at Apple who knows how to perform  
19 surveys, correct?

20 A. I would -- I would assume so, yes.

21 Q. Kind of like you've got experts who know how to read  
22 code, do you think Apple hires the best and the brightest to  
23 go out and conduct surveys to determine what consumers think  
24 about their products?

25 A. Sure.

1 Q. Yet in this case, Apple claims that it has no idea how  
2 to value an individual feature of an Apple product; isn't  
3 that correct?

4 A. That's correct. The surveys that are typically done are  
5 around the -- the functionality, new enhancements, how people  
6 like to review systems. Those are the type of -- would they  
7 like a bigger screen. It's those types of attributes --

8 Q. So you do --

9 A. -- of their products --

10 Q. I'm sorry.

11 A. It's those types of attributes that that -- you know,  
12 for the ones that I've seen.

13 Q. So you do know about some surveys within Apple where  
14 they survey the functionality that consumers are looking for  
15 in their products?

16 A. I -- I mean, I can't speak to specifics. I have seen it  
17 in, you know, presentations that have been given.

18 Q. In this case, Apple takes the position that surveys  
19 can't be used to determine why a purchaser buys a device; is  
20 that right?

21 A. That's correct.

22 Q. And, in fact, it conducted no survey, it didn't ask Dr.  
23 Dhar to conduct a survey to value the features that  
24 Smartflash has accused in this case, did it?

25 A. I'm not on the legal team, but -- so I couldn't speak

1 to -- I couldn't speak to that.

2 Q. You can't tell the jury whether or not Apple conducted  
3 its own survey, whether in-house or through Dr. Dhar, to  
4 determine a value of these features?

5 A. I can tell you that I've never seen any surveys inside  
6 Apple that tried to estimate value of features. You know,  
7 we -- our -- our products are made up of thousands of  
8 features, and they all basically contribute in -- you know,  
9 for the whole experience. It's not an individual one that we  
10 try to, you know, parcel off as, you know, being worth a  
11 certain amount.

12 Q. And you didn't do it in this case either, did you, sir?

13 A. Again, I'm here to speak about Apple and its products.  
14 I'm not part of, basically, the legal defense team on this.

15 Q. Did you hear Mr. Batchelder in his opening talk about  
16 holes, the holes in Smartflash's case? I think he listed  
17 three holes.

18 A. Yes, sir.

19 Q. I mean, that's what Dr. Dhar was hired to do, right?

20 A. I -- I don't know the specifics of...

21 Q. You know that he wasn't hired to conduct a survey to  
22 attempt to determine the value of the features that  
23 Smartflash accuses in this case.

24 Do you know that, or do you not know that?

25 A. I -- I don't know that.

1 Q. Did you hear Mr. Batchelder ask Mr. Mills if he'd ever  
2 seen a survey that used the word "motivate" in it?

3 A. I -- I heard that, yes.

4 Q. And Mr. Mills said, not that he could think of?

5 A. Yes, that's my -- my recollection.

6 Q. I'll represent to you that this comes from Apple's  
7 documents, Bates labeled APPSF347-911, documents entitled  
8 iTunes Store Gift Cards, 12 of 2008. And that's Page 17 of  
9 the document.

10 Are you with me, Mr. Muller?

11 A. Yes, I see this.

12 Q. And you see there, it says: Controlling spending and  
13 convenience are main drivers for personal use purchases.

14 A. Yes. Yes, I read that in the top.

15 Q. And then down there, it says: Motivations for self,  
16 right?

17 Can you read that?

18 A. Yes, sir.

19 Q. And then it actually asks the question that was asked.

20 A. I'm sorry. I can't quite read that.

21 What motivated you to purchase an iTunes gift card? Is  
22 that my --

23 MR. WARD: I tell you what, Your Honor. May I  
24 approach the witness with a copy?

25 THE COURT: You may.

1 THE WITNESS: Thank you.

2 Q. (By Mr. Ward) It is hard to see there, isn't it?

3 Will you read the question that Apple was asking in its  
4 own surveys?

5 A. What motivated you to purchase an iTunes gift card for  
6 yourself?

7 Q. So Apple itself has asked survey questions of  
8 respondents to see what motivates them to make purchases,  
9 correct?

10 A. Correct, sir.

11 Q. And you see the size of that sample? Purchase gift card  
12 for self: n equals 363?

13 A. Yes, I see that.

14 Q. Any idea what that n equals 363 means?

15 A. I would assume it's the number of respondents.

16 Q. Good enough for Apple.

17 A. I -- I can't speak to the gift card -- the gift card  
18 group or what they were -- what they were looking for.

19 Q. Were you present during the cross-examination of Dr.  
20 Wecker?

21 A. Yes, sir, I was.

22 Q. Do you remember these numbers that he wrote?

23 A. Yes, sir.

24 Q. And these were actually written by Mr. Post, correct?

25 A. Yes, Mr. Post wrote those.

1 Q. And he performed some calculations where he divided the  
2 folks that were alone motivated into over 200 million.

3 You recall that?

4 A. I -- I do recall that, yes.

5 Q. Do you understand that the things Mr. Post writes, the  
6 things that I write, they're not evidence, right?

7 A. I -- I believe that, yes.

8 Q. And you understand that you do have a survey expert  
9 who's named Dr. Dhar, right?

10 A. Correct, sir. That's my understanding.

11 Q. And you understand that experts in cases have to provide  
12 reports. Our experts have to take reports and disclose all  
13 their opinions and pass them over to Apple.

14 Do you know that?

15 A. Yes, sir.

16 Q. And Apple's experts have to take their reports and pass  
17 them over to Smartflash and disclose all their opinions that  
18 they're going to give at trial, right?

19 A. Yes, sir.

20 Q. And that's so lawyers have a chance to go and they get  
21 to test what the experts are telling them, because they're  
22 the experts in the field, right?

23 A. That's -- that's -- that's my understanding, yes.

24 Q. And so we get to study those reports and talk to our own  
25 experts and figure out what's right.



1           You understand? That makes sense to you?

2       A.    Makes sense, yes.

3       Q.    Do you know if Dr. Dhar -- any -- did any of these  
4       calculations in his expert report?

5       A.    I -- I -- I don't know.

6       Q.    If I represented to you that he did no calculations like  
7       this whatsoever to criticize that -- anything that Dr. Wecker  
8       did, would it surprise you that Apple's counsel got up and  
9       did these types of calculations?

10      A.    Again, I -- I -- I don't know what was -- what was asked  
11      of Dr. Dhar.

12      Q.    We'll have to let Dr. Dhar tell us what relevance these  
13      calculations have to this case, right?

14      A.    Yes, sir.

15      Q.    You've been present during the trial, and you heard the  
16      cross-examination of Mr. Racz, right?

17      A.    Yes, sir, I did hear that.

18      Q.    And did you hear Mr. Batchelder go through the list of  
19      things that Mr. Racz did not invent?

20      A.    Yes, I remember that.

21      Q.    Did anything that Mr. Racz say about, I agree, I didn't  
22      invent -- invent that, did any of that surprise you in any  
23      way whatsoever?

24      A.    No, sir, it did not.

25      Q.    Because when you had your deposition taken, you were

1 asked about things that Apple did not invent, right?

2 A. Yes, sir, that's correct.

3 Q. Apple didn't invent the smartphone.

4 A. No, sir, we did not invent the smartphone.

5 Q. The web browser?

6 A. No, sir.

7 Q. Camera?

8 A. No, sir, we didn't invent the camera.

9 Q. Touchscreens?

10 A. No, we didn't invent the touchscreen.

11 Q. Apple was not the first company to sell digital content?

12 A. Correct, sir. That's been going on since the mid-'90s.

13 Q. Apple did not invent selling digital content, did it?

14 A. No, sir, it did not.

15 Q. It didn't invent selling digital content online?

16 A. No, sir.

17 Q. Didn't invent the Internet?

18 A. No.

19 Q. Digital certificates?

20 A. No, sir, we didn't.

21 Q. And I'll run through this list; and if I name something  
22 you invented, we'll come back to it. All right?

23 Digital licenses, encryption, encryption keys, parental  
24 controls, computer memory, Flash memory, non-volatile memory,  
25 or an MP3 player. Apple doesn't claim to have invented any

1 of those things, does it?

2 A. No, sir, we do not.

3 Q. And you'd agree with me that in the art of electronic  
4 devices, that all inventions are essentially a compilation of  
5 known elements and new and unique ways, right?

6 A. As long as it's inventive, yes.

7 Q. As long as it's inventive. It's not like someone's  
8 coming up for the first time with: Hey, I just invented a  
9 microprocessor. Now I'm going to put it in a phone. That's  
10 not how it works, is it?

11 A. Typically, no.

12 Q. You take these known elements, and you combine them in  
13 new and unique ways, right?

14 A. Yes, sir.

15 Q. And what might be obvious in 2014 to us now might not  
16 have been so obvious back in 1999, correct?

17 A. I would agree with that.

18 Q. Might not have been that obvious in 1999 what you saw in  
19 2004 either, correct?

20 A. Correct.

21 Q. You ever witness an auto accident, Mr. Muller?

22 A. Yes, sir, unfortunately.

23 Q. They can be bad things so I don't want to go back and  
24 relive bad memories. So you know what a witness to an auto  
25 accident is, right?

1 A. Yes, sir, I do, and have been one.

2 Q. That's an intersection, okay?

3 A. I follow you.

4 Q. I'm going to put a stop sign right there. Are you with  
5 me?

6 A. I'm following you, yes.

7 Q. I'm going to put Mr. Muller right here on this corner,  
8 okay?

9 A. Fair enough. Yeah, close enough resemblance.

10 Q. You got a big rig coming through, and it hits a car  
11 going the other way, and you've got a good view of it.

12 Are you with me?

13 A. Yes, sir, I am.

14 Q. All right. So assume with me that that big rig going  
15 through -- we'll put a well-known name on it. Let's call it  
16 the Exxon -- Exxon rig.

17 Are you with me?

18 A. Yes, sir, I'm with you.

19 Q. So you're an independent witness to that, right? You  
20 don't know anyone in either one of the vehicles.

21 Are you with me?

22 A. I'm with you.

23 Q. Assume with me that the lawyers for Exxon show up on  
24 your front doorstep.

25 Are you with me?

1 A. Yes, sir.

2 Q. And folks can't agree on who caused this accident.

3 You got the Plaintiff in this car, and you've got the  
4 Defendant Exxon.

5 Are you with me?

6 A. Sure. Yes.

7 Q. Exxon's lawyers show up at your doorstep, and they say:  
8 Mr. Muller, you might get subpoenaed, asking for documents or  
9 to give a deposition, and we want to pay to be your lawyers.

10 Are you with me?

11 A. Okay.

12 Q. A little unusual to you?

13 A. Sure.

14 Q. It sounds a little unusual, doesn't it?

15 A. It does sound -- yes. Yes, sir.

16 Q. And then they tell you: For the time that you spend  
17 telling us about this accident, we want to pay you for your  
18 time, okay?

19 Are you with me?

20 A. Yes, sir.

21 Q. And they ask you what your standard hourly rate is, and  
22 you tell them: I make between \$135 to \$200 an hour.

23 Are you with me?

24 A. Yes. Yes, I am, sir.

25 Q. But you tell them: You know what, to get involved in

1 this case and to tell you the truth, it's going to cost you  
2 double that, \$400, \$400 an hour to tell you what I saw.

3 Are you with me?

4 A. Yes, sir. I follow you.

5 Q. If you're on the outside looking in, is that a little  
6 strange to you?

7 A. It sounds -- it sounds strange, yes.

8 Q. Sounds strange that a witness would say: I'll show up  
9 and tell you the truth, but it's going to cost you double to  
10 show up and tell you the truth. Right?

11 A. Yes, sir.

12 Q. But Exxon says: You know what, sounds like a good idea;  
13 we're going to pay you double, and we want you to sign an  
14 engagement letter with us.

15 Are you with me?

16 A. Okay.

17 Q. They sign this engagement letter that says: Don't worry  
18 about your legal fees; Exxon is going to pay those. Okay?

19 A. So my legal fees for testifying? Is that correct?

20 Q. Yeah. Anything that happens. If the Plaintiff's  
21 lawyers show up and they want to talk to you, you're  
22 instructed not to talk to the Plaintiff's lawyers by Exxon's  
23 lawyers.

24 Are you with me?

25 A. Okay.

1 Q. That's in the agreement. The agreement says: This  
2 stuff is secret. Even though you're a fact witness, don't  
3 talk to the Plaintiff's lawyers.

4 Are you with me?

5 A. Yes, sir.

6 Q. Even though you're this independent fact witness, who's  
7 charging double for your time, don't talk to the other side.

8 Does that all sound strange to you?

9 A. In this particular case, yes, sounds -- sounds -- yeah,  
10 sure.

11 Q. This scenario sounds familiar, though, doesn't it,  
12 Mr. Muller?

13 A. What do you mean?

14 Q. Well, that's what Apple did in this case, isn't it, sir,  
15 with Mr. Ansell?

16 A. I don't know any of the specifics on that.

17 Q. Well, let's talk about the specifics and see if any of  
18 this refreshes your recollection, okay?

19 A. Okay.

20 Q. Do you know who Mr. Ansell is?

21 A. No, sir, I don't.

22 Q. So it's -- would be news to you if I told you that  
23 Apple's lawyers identified him as a witness with respect to  
24 prior art, approached him and offered to represent him for  
25 free, and that Mr. Ansell demanded double his hourly rate to

1 testify for Apple? You don't know any of those facts?

2 A. No, sir, I don't. I'm here to tell you about Apple and  
3 our products.

4 Q. You don't know that Mr. Ansell is on the "will call"  
5 witness list for Apple to come testify about his patent that  
6 Apple claims invalidates Smartflash's patents? This is all  
7 news to you?

8 A. Yes, sir.

9 MR. WARD: Can we look at Plaintiffs' Exhibit 753?

10 Q. (By Mr. Ward) See there it says: By email --

11 MR. WARD: If you would, Mr. Mortensen, zoom in on  
12 the -- there you go.

13 Q. (By Mr. Ward) By email to Steven T. Ansell, October 9,  
14 2014.

15 Do you see that?

16 A. Yes, sir.

17 Q. And it's got Ms. Fukuda's -- Ms. Fukuda's name on the  
18 letter, correct?

19 A. Yes, sir.

20 Q. And she cross-examined Dr. Jones. You know that name,  
21 right?

22 A. Yes. Yes.

23 Q. She's one of the lawyers for Apple in this case,  
24 correct?

25 A. Yes, sir, she is.



1 Q. And so she writes this letter to Mr. Ansell, and there  
2 in the first sentence of the second paragraph, she writes and  
3 says: We understand that you may have knowledge relevant to  
4 the action.

5 You see that?

6 A. Yes, sir.

7 Q. And in the next sentence, she says: We would appreciate  
8 the opportunity to visit with you further.

9 Right?

10 A. Yes, sir. I'm following you.

11 Q. And then she says: It is possible you may receive a  
12 subpoena seeking documents and/or testimony in connection  
13 with the action. We have, therefore, agreed to represent you  
14 personally in connection with the action.

15 You see that?

16 A. Yes, sir, I do.

17 MR. WARD: Let's scroll down to the bottom  
18 paragraph: Fees and Expenses.

19 Q. (By Mr. Ward) Then she writes: Apple will pay Ropes &  
20 Gray's fees and expenses incurred in representing you in the  
21 action.

22 Did I read that right?

23 A. Yes.

24 Q. Of course, the fact that Apple has agreed to pay such  
25 fees and expenses will not interfere with Ropes & Gray's

1 independence or professional judgment or with Ropes & Gray's  
2 client-lawyer relationship with you.

3 Did I read that right?

4 A. Yes, sir.

5 MR. WARD: Let's go to the second page, first  
6 sentence, top paragraph.

7 Q. (By Mr. Ward) Further, to compensate you for your time,  
8 Apple will pay you at the rate of \$400 per hour and reimburse  
9 you for any necessary and reasonable travel and other  
10 expenses incurred on its behalf.

11 A. Yes, sir. It seems low in comparison to some of the  
12 other experts that are testifying.

13 Q. You understand that Mr. Ansell says he's a fact witness  
14 in this case.

15 A. Okay.

16 Q. You ever heard of paying a fact witness double what they  
17 claim their hourly rate is just to get them to show up and  
18 tell the truth?

19 A. I'm not on the legal team.

20 Q. I'm not asking you about as a legal team; I'm asking you  
21 about as a human being out in the everyday world. Have you  
22 ever heard of someone saying: I'm a fact witness, and to  
23 show up and tell you the truth, pay me double?

24 A. If you're asking him to travel here and take time away  
25 from his existing job and function and to forego other, you

1 know, income that he's making, I mean, it seems reasonable to  
2 compensate the individual for coming here and -- and  
3 providing testimony if he's not an Apple employee, right.

4 Q. And pay him double?

5 A. I -- I can't speak to the -- the specifics, you know.

6 Q. Mr. Muller, I'm asking to speak to specifics. Does that  
7 strike you as strange that someone would say I'm going to  
8 show up and I'm fine, I agree with you, pay him for  
9 compensation for travel, whatever his hourly rate is; but if  
10 he says pay me double if you want me to tell the truth about  
11 the facts, does that strike you as strange at all, Mr.  
12 Muller?

13 A. I mean, if I were looking at it, it would be, you know,  
14 what other things are basically he's having to forego, right?  
15 I mean, it's -- you know, if he's in the middle of a  
16 three-month engagement and he's got to give that up -- I  
17 mean, I -- I can't speak to specifics on -- on the -- on what  
18 the arrangement would be.

19 Q. Because as you just told us, you don't even know  
20 anything about Mr. Ansell or what his situation is, do you,  
21 sir?

22 A. No, sir, I don't.

23 MR. WARD: Let's go to privileged and confidential  
24 information there in the next sentence. And I tell you what,  
25 before we do that, the last sentence of that second

1 paragraph.

2 Q. (By Mr. Ward) Ropes & Gray and Apple will only ever be  
3 interested in your truthful testimony.

4 Right?

5 A. Yes, sir.

6 Q. That's what it says, right?

7 A. Yes, sir.

8 Q. Do you think Mr. Ansell had to be reminded that that's  
9 all they were interested in?

10 A. No, sir.

11 Q. All right. Under privileged and confidential  
12 information, Ms. Fukuda writes: You agree not to waive  
13 privilege over these communications or documents and matters  
14 that are subject of subpoenas or documents that are otherwise  
15 privileged without Apple's agreement, but agree that Apple  
16 may waive privilege involving communications between you,  
17 Apple, and Ropes & Gray if it determines that it is necessary  
18 to do so.

19 Did I read that right?

20 A. Yes, sir, you did.

21 Q. So Mr. Ansell is agreeing that he's not going to tell  
22 anybody about what he talks about with Apple's lawyers. You  
23 agree with that?

24 A. That would -- that would be my interpretation of the --  
25 of the wording there.

1 Q. And would it surprise you to know that Mr. Ansell has  
2 been sending invoices to Apple's lawyers for his time?

3 A. No, it wouldn't surprise me.

4 MR. WARD: Let's look at Plaintiffs' Exhibit 755,  
5 and we'll go to the second page. We'll start from the bottom  
6 up. Can we put the other page and this one together so we  
7 can see?

8 Q. (By Mr. Ward) And you can see there on December 6th,  
9 2014, two months ago, Ms. Fukuda is writing Mr. Ansell: If  
10 anyone from Smartflash or their lawyers, Caldwell Cassady &  
11 Curry, calls you, please do not discuss anything with them  
12 and ask them to call me directly. Thanks.

13 A. Yes, sir.

14 Q. I read that right, correct?

15 A. Yes, sir, you did.

16 Q. So if we turn back to you being the witness to the  
17 accident, would it strike you strange if Exxon instructed you  
18 don't talk to the other side? We know you're a fact witness,  
19 but don't talk to them. We're now your lawyers. Call us if  
20 they've got any questions.

21 Does that strike you as strange in that situation?

22 A. In my reading, you know, the Exxon situation is  
23 different than this particular situation, and I don't know  
24 the specifics around this particular situation.

25 Q. Do you know if Mr. Ansell agreed to talk to Mr. Caldwell

1 when he called him?

2 A. No, sir, I -- I don't.

3 Q. Let's scroll up into this exhibit. Mr. Ansell writes to  
4 Ms. Fukuda: Of course, I did receive a call from someplace  
5 in Texas yesterday, but I didn't answer it and no message was  
6 left.

7 That's what he wrote, right?

8 A. Yes, sir.

9 Q. Do you know that Caldwell Cassady & Curry's located in  
10 Texas?

11 A. Yes, sir, I do.

12 Q. Let's scroll up. And here he is, telling Ms. Fukuda  
13 that it -- indeed, Mr. Caldwell has called, correct?

14 A. Just a second. Yes, sir, I see that.

15 Q. And Mr. Caldwell says today -- that Mr. Caldwell had  
16 called him today requesting to introduce himself and saying  
17 that he had heard I may be testifying in this case.

18 Right?

19 A. Yes, sir, I see that.

20 Q. And this is an important case to Apple, right?

21 A. Very important.

22 Q. Very important?

23 A. Yes, sir.

24 Q. And apparently, Mr. Ansell is an important enough  
25 witness, that Apple decided to approach him and pay his legal

1 fees, sign him up, and tell him not to talk to Smartflash's  
2 lawyers, right?

3 A. I mean, I -- I -- I can read basically the specifics  
4 that you're pointing out here.

5 Q. But until you took the stand, you knew nothing about Mr.  
6 Ansell, is what you're telling us. Right?

7 A. That's correct, sir.

8 Q. Now, he tells Ms. Fukuda that Mr. Caldwell left his  
9 phone number, but I have not called him back. If you like, I  
10 can return the call and request him to contact you; or if you  
11 just want to contact him on my behalf, he left his contact  
12 number as, and then he leaves his name and his phone number.  
13 Right? Is that correct?

14 A. Yes, sir.

15 MR. WARD: Let's look at Plaintiffs' Exhibit 754.

16 Go to the second page, please -- third page.

17 Q. (By Mr. Ward) You see this invoice?

18 A. Yes, sir, I do.

19 Q. And it says -- it's got dates, and it says who?

20 A. Yes, sir, I see that.

21 Q. It's got Mr. Ansell's name, right?

22 A. Correct, sir.

23 MR. WARD: Let's go to the first page, bottom.

24 Q. (By Mr. Ward) There's Mr. Ansell, again, December 3,  
25 2014, writing Ms. Fukuda, telling her that he's attached his

1 invoice. Please let me know if you have any questions. If  
2 you need to see more details on the tasks.  
3 Right?

4 And Ms. Fukuda responds --

5 MR. WARD: Scroll up.

6 Q. (By Mr. Ward) Hi, Steve. We will process right away.  
7 Do you mind just deleting the expert witness words and  
8 resend? We're using you as a fact witness for this trial.  
9 Thanks.

10 Did I read that right?

11 A. Yes, sir, you did.

12 Q. And I told you about the process that we've got to go  
13 through if a party determines that it's going to select  
14 someone as an expert witness, right?

15 A. What -- what process?

16 Q. Of compiling expert reports and sending them to the  
17 other side so that they have an opportunity to review all the  
18 opinions that that expert might express at trial so that we  
19 get a chance to look at it closely and determine whether or  
20 not we disagree. Right?

21 A. Yes, sorry. Yes.

22 Q. And so Mr. Ansell, he's describing himself as an expert,  
23 at least in his invoice, right?

24 A. Yes, sir.

25 Q. And Ms. Fukuda says: Delete that, you're a fact



1 witness.

2 That's what she instructs him to do, right?

3 A. Yes, sir.

4 Q. And Mr. Ansell, at his double hourly rate, emails right  
5 back and says: No problem. I had just given the task list I  
6 work from, that name.

7 That's what he tells her, right?

8 A. Yes, sir.

9 Q. And as Apple's corporate representative sitting on the  
10 stand, you'd tell us there's just nothing unusual about what  
11 we've been through with Mr. Ansell's role in this case on  
12 behalf of Apple?

13 A. I'm not on the legal team, and so I can't represent  
14 essentially these -- these documents or -- or this  
15 proceeding. I don't know what is -- what he normally does  
16 for an hourly rate.

17 Q. As far as you know, this is just standard operating  
18 procedure at Apple?

19 A. I -- I can't speak to, you know, how -- how the legal  
20 team operates in these matters.

21 MR. WARD: Pass the witness.

22 THE COURT: Cross-examination by the Defendant.

23 MR. BATCHELDER: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BATCHELDER:

1 Q. Mr. Muller, good morning.

2 A. Good morning.

3 Q. Who asked you to come to this trial?

4 A. Apple did.

5 Q. And what is your current title at Apple?

6 A. I'm senior engineering director.

7 Q. In addition to being an engineer, are you also a lawyer,  
8 sir?

9 A. No, sir, I'm not.

10 Q. And in your understanding, are patents legal documents?

11 A. Yes, sir, they are.

12 Q. Is it part of your job responsibility to analyze whether  
13 patents are infringed or invalid?

14 A. No, sir, it's not. We have a fantastic patent legal  
15 group.

16 Q. So they do those analyses?

17 A. Yes, sir, they do.

18 Q. In preparing for your deposition, who did you meet with?

19 A. I met with -- I met with our -- our legal group.

20 Q. Why did you meet with them?

21 A. Because they're the -- you know, they're the experts in  
22 this matter.

23 Q. All right. And are you here today to talk about whether  
24 the patents in this case are infringed or invalid or whether  
25 those checkmarks belong?

1 A. No, sir, I'm not. We've -- Apple's asked experts to  
2 basically perform those analyses, and the men and women of  
3 the jury will be hearing from them later on today or  
4 tomorrow.

5 Q. So in this trial, who will speak on Apple's behalf as to  
6 whether those checkmarks belong, whether the patents are  
7 infringed?

8 A. Apple -- Apple's experts will refer to those.

9 Q. And in this trial, who will speak on Apple's behalf as  
10 to whether these patents are invalid?

11 A. Apple's experts will.

12 Q. And who -- in this trial, who will address prior art  
13 references?

14 A. I believe Apple's experts will.

15 Q. Now, are you trained in valuing patents?

16 A. No, sir, I'm not trained in valuing patents.

17 Q. Is a part of your job function at Apple to value  
18 patents?

19 A. No, sir. I'm an engineer. Write code.

20 Q. In this trial, who will speak to the value of the  
21 patents on Apple's behalf?

22 A. I believe Dr. Becker will speak to the value.

23 Q. From Apple's point of view, why are you here today?

24 A. I'm -- I'm here to help educate the jury about Apple and  
25 its products and services that -- that we've -- we've

1 designed over the years.

2 Q. Why you?

3 A. I've been at Apple for -- for 13 years. I was the first  
4 engineer in the iTunes's Store. I worked on it for over a  
5 decade. I've, you know, been in all -- you know, in all  
6 manner of the -- of Apple over the years.

7 Q. Did I hear you mention you grew up in Oklahoma?

8 A. I did, yes, about five-and-a-half, six-hours north of  
9 here, Edmond, Oklahoma, just up I-35.

10 Q. Do you have a family, sir?

11 A. I do. My wife, who I met in 7th grade, also from  
12 Oklahoma. We have four children -- four young children.  
13 Three boys, 11, 9, and 4; and -- and then we have one girl  
14 who's 1, so --

15 Q. Did you go to college?

16 A. Yes, sir. I -- my first year I went to Tulane  
17 University, and my remaining years I went to Georgetown  
18 University in Washington, D.C.

19 Q. What degree did you graduate with?

20 A. I graduated with a -- a minor in mathematics, a Bachelor  
21 of Science in economics, a Bachelor of Science in computer  
22 Science, and a Master of Science in economics.

23 Q. And how long did all that take you?

24 A. Four years.

25 Q. Did you work during college?

1 A. Yes, I -- I did work at the Cognitive Institute of  
2 Georgetown University.

3 Q. What did you do in that job?

4 A. Well, it was -- it was actually somewhat menial. It  
5 was, you know, repairing hard drives, pulling networking  
6 cables, kind of all the -- all the grunt work that you start  
7 out doing when you're learning about how to put together  
8 IT -- IT systems.

9 Q. So you were working on computers?

10 A. Yes. Yes, sir, I was.

11 Q. What year did you graduate college?

12 A. I graduated in the summer of 1999.

13 Q. And you started at Apple when?

14 A. In May of 2002, I started at Apple.

15 Q. What did you do in between?

16 A. In between, I worked at several small computer companies  
17 in -- in the Bay Area.

18 Q. And can you summarize for the jury at a high level what  
19 kind of work you've done at Apple?

20 A. Sure. So I -- I joined Apple to build the -- the iTunes  
21 music store; and, you know, so over the years we built the  
22 music store, we built the book store, the video store, all --  
23 you know, the App Store, and really I was very -- I was one  
24 of the -- kind of the chief architects responsible for kind  
25 of the overall architecture and all the pieces that went into

1 the design of those -- those systems.

2 Q. So of all the engineers at Apple, what engineer number  
3 were you on the iTunes Store?

4 A. I was the -- I was the first engineer hired on to the  
5 iTunes music store.

6 Q. No. 1?

7 A. Yes, sir, that's correct.

8 Q. What's the relationship between the iTunes Store and the  
9 App Store?

10 A. The -- well, we -- we started out calling it the iTunes  
11 Music Store, and -- but as we started to add more content,  
12 like video and TV shows, you know, calling it the iTunes  
13 Music Store was -- you know, became awkward, so we shortened  
14 it to the iTunes Store. And the App Store is built right in  
15 as just another kind of content type, if you will, so it's  
16 running through all the back-end infrastructure as the -- as  
17 the iTunes Music Store. It's just -- yeah.

18 Q. How many Apple engineers do you now oversee?

19 A. I oversee -- within my group 200 -- about 220 engineers  
20 and data scientists.

21 Q. And how long did you work on that iTunes Store project,  
22 sir?

23 A. Just over 11 -- I think 11-and-a-half years, I -- I ran  
24 that group.

25 Q. So during that 11-plus-year period, what's your best

1 estimate of the number of engineer hours that Apple devoted  
2 to the iTunes Store?

3 A. We easily put in, you know, hundreds of thousands of  
4 engineering hours over -- over the years at the iTunes Store.

5 Q. That same question as to dollars. What's your best  
6 estimate of the dollars invested by Apple in the iTunes Store  
7 over that time?

8 A. Well -- well north of over a billion dollars we put into  
9 the iTunes Store over the years.

10 Q. When was the iTunes Store first opened for business?

11 A. April 28th, 2003.

12 Q. If that's the case, sir, why did your group continue to  
13 invest so many engineer hours and dollars in the iTunes Store  
14 even after it opened?

15 A. Well, when we were first developing the iTunes Store,  
16 there were so many more features that we wanted to do. We  
17 wanted to provide different ways that people could discover  
18 music. We wanted to find different ways that people could  
19 enjoy, you know, their digital content. And, you know, just  
20 over the years, there's just been so many new things to do  
21 and so many new, you know, countries to expand into. So  
22 there's just -- there's always a -- you know, a laundry list  
23 10 miles long of -- of new features and ideas that -- that we  
24 want to basically do to -- you know, for our customers.

25 Q. What business is Apple in?

1 A. Apple started out in the computer business in the -- in  
2 the '70s. And since then, it's evolved into the computer --  
3 or the kind of consumer electronics business with the phones  
4 and tablets and -- and now we're growing into the services  
5 business, as well.

6 Q. Headquartered in the U.S.?

7 A. Yes, sir, located in Cupertino, California.

8 Q. About how many employees does Apple have?

9 A. I actually just checked this last week. In the United  
10 States, we have 65,000 employees. And internationally,  
11 another 40,000 employees.

12 Q. Do any Apple employees work in Texas?

13 A. Yes, sir. We have about 7,000 Apple employees here in  
14 Texas. Our -- a good portion of our finance group is located  
15 here, as well as our Apple Care organization.

16 Q. In your time at Apple, have you come to learn what the  
17 company's major project milestones have been?

18 A. Yes, sir, I have.

19 Q. All right.

20 MR. BATCHELDER: Let's put that up.

21 Your Honor, request to approach the witness with a  
22 mouse that he can use to indicate?

23 THE WITNESS: I have one.

24 MR. BATCHELDER: Oh, you have one? Okay.

25 THE WITNESS: Let's see if it works.



1 Q. (By Mr. Batchelder) Okay. So you've got a mouse and  
2 that little red dot that you can use to circle things?

3 A. It's working.

4 THE COURT: I tell you what -- I tell you what  
5 we'll do: Before we get into this, it's noon. We're going  
6 to take this opportunity to break for lunch. When we come  
7 back for lunch, we can continue with this.

8 Ladies and Gentlemen of the Jury: Please take your  
9 notebooks with you. We're going to try to keep lunch as  
10 reasonable as we can so that we can keep making progress.

11 Don't discuss anything about the case, follow all  
12 of my other instructions, and we'll be back in here as soon  
13 as possible to continue with the evidence this afternoon.

14 But you're excused for lunch at this time.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (Jury out.)

17 THE COURT: All right. Counsel, I anticipate this  
18 lunch break being approximately 35 to 45 minutes.

19 With that, we stand in recess for lunch.

20 (Lunch recess.)  
21  
22  
23  
24  
25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of our abilities.

/s/ \_\_\_\_\_  
SHEA SLOAN, CSR, RPR  
Official Court Reporter  
State of Texas No.: 3081  
Expiration Date: 12/31/16

February 18, 2015

/s/ \_\_\_\_\_  
SHELLY HOLMES, CSR, TCRR  
Deputy Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/16